APPENDIX
Volume II

Supreme Court, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1251

STANDARD OIL COMPANY OF CALIFORNIA,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Motion to Recall Mandate and for Leave for District Court to Consider Motion to Set Aside Judgment for Fraud Upon the Court, Pursuant to Rule 60(b), Federal Rules of Civil Procedure

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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1. United States of America v. Standard Oil Company of California, United States District Court, Northern District of California, Civil No. 52334

a. DEPOSITION: OCTOBER 1, 1970: RAYMOND C. TURNBULL

United States District Court for the
Northern District of California

UNITED STATES OF AMERICA, *Plaintiff,* vs. STANDARD OIL COMPANY OF CALIFORNIA, *Defendant.*	Civil No. 52334

• • • • • • • •

[4]

RAYMOND C. TURNBULL,

called as a witness on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MUSSMAN [Counsel for Standard]:

• • • • • • • •

[9]

• • • • • • • •

Q. Now, in reviewing the various documents that were produced by you for Mr. Hollander and Mr. Hollander gave us

[10]

copies of them, it appears that you were quite active in attracting various kinds and types of businesses to American Samoa. • • •

• • • • • • • •

[71]

• • • • • • • •

Q. If you read on, you will see in this paragraph [TU 23-24] a reference to a conversation that you had had with Fletcher.

A. Yes. I just mentioned him before.

Q. Yes. What sort of a deal did you foresee between Fletcher and Union here?

A. I didn't see any. I went down to find out from my friends what the actual prices on shipboard—what the shipping costs would be. I was just on a hunting expedition to determine prices for myself.

• • • • • • • •

[72]

• • • • • • • •

Q. As I read this paragraph, what you discussed with Fletcher was the possibility of Fletcher opening a refinery in American Samoa and refining Indonesian crude, and then, somehow or another, Union was going to, I guess, market the product.

I'm just asking you. That's what I gather from reading this, but I'm just asking you what you did have in

[73]

mind.

A. You are going to have to understand, you being an attorney and me being a promoter, that ideas turn on and sometimes when you pursue them, they don't make any sense. And I was discussing this with—I was discussing this thing with the governor—

• • • • • • • •

Q. You say this made some sense to Fletcher when you discussed it?

A. Fletcher wanted to sell oil.

Q. Crude?

A. Was willing to sell me crude.

• • • • • • • •

Q. You mean they were going to ship crude from the States to Samoa?

A. This is what I did. Now, something we haven't even discussed yet was that we were even talking—and this was the same time when I was looking into the possibilities of putting a refinery on Tutuila, T-u-t-u-i-l-a, Western Samoa.

Q. That's what this says.

A. And I asked Fletcher about it. I said, "At least

[74]

this is an idea, the beginning of an idea. Would you people be interested in this?"

And he indicated interest in doing it. It never got off the ground.

• • • • • • • •

[121]

• • • • • • • •

Q. Now, in your letter of June 2, you mention the fact that you called on the Mobil people and tried to stir up some interest there.

A. I not only called on them once in New York, I called on them three times. And I called the Mobil people, if I remember correctly, in Australia.

And I went back and I—this refreshes my memory. My handwriting in the letter dated June 9 from Mr. Aspinall refreshes my memory who I met with in New York twice,

and that's Hugh Keeley and Clyde Port, in the New York office of Mobil.

Q. Are you looking at the handwritten notes on there?

[122]

A. Yes.

Q. Is that your handwriting?

A. Yes.

Q. Who is this Charles Small?

A. I think he was—I'm not sure. I talked to Mobil in Australia. I talked to Shell, I believe, in Australia, and I talked to Shell in Western Samoa. I don't know which one he was. • • •

• • • • • • • •

[127]

Q. Weren't you at all times trying to get these oil companies to come in and build storage—

A. No, I was not.

• • • • • • • •

[153]

A. As I told you before, I was in contact with the Shell in Australia and the Shell in Western Samoa. Now, I don't know where this fits, if I used the correct word, Asiatic Petroleum.

Q. Does that name mean anything to you, Mr. Galeon?

A. It sure as hell doesn't.

• • • • • • • •

[158]

A. I was working on every one of these deals by myself.

Q. How did they compare?

A. Compare with what?

Q. With each other. Mobil, Asiatic, and Summit.

A. All of them approached the same way. Lots of interest, we'll look into it. Back and forth, back and forth. And some of them died out and some of them said, "We can't compete."

• • • • • • • •

[182]

• • • • • • • •

Q. • • • Do you recall having a meeting with Starkist and Van Camp people jointly?

A. I do, at Van Camp.

• • • • • • • •

[183]

• • • • • • • •

Q. • • • Well, do you remember the discussion, what was said by whom or anything?

A. I remember Mr. Gillis was there. I remember it was over at Van Camp down in Wilmington or San Pedro, or wherever it is, in Long Beach.

• • • • • • • •

Q. What did you propose? Did you tell them about this, the deal that you had with Oceanic?

A. We were getting down now to the point where it was time for discussions and to choose up sides. "Will you go if the price is right?"

Q. What did they say? Did they say, "We aren't going to commit to you until after we get Standard to reduce the price?"

A. Frankly, they didn't say a word. They didn't say anything I could hang my hat on.

Q. Did you give them prices?

A. I don't remember.

• • • • • • • •

[194]

• • • • • • • •

Q. I'm going to show you two documents, Mr. Turnbull. They purport to be written by you on April 13, 1965. They are identical letters, except one is addressed to Mr. Pederson of Starkist and the other is addressed to Mr. Copeland.

I ask you if you recall writing and sending these letters on or about the date they bear, which is April 13, 1965.

A. Yes.

• • • • • • •

[196]

• • • • • • •

Q. Well, did you get a response from these people to your letter?

A. I haven't got one in my file.

• • • • • • •

[201]

• • • • • • •

Q. Now I'm going to show you the document marked DDX 133, and that is the letter from Mr. McCook to Governor Lee, dated August 13, 1965.

Do you recall this letter?

A. Yes.

Q. Did Mr. McCook write this letter with your approval?

A. Yes.

Q. And had he come into the picture as the one who was willing to finance the storage cost?

[202]

A. All the cost, yes.

• • • • • • •

[205]

• • • • • • •

Q. • • • In the last paragraph, Mr. McCook says: "It has been suggested by Starkist that Governor Lee act as a catalyst in the proposal."

A. That's true.

[206]

Q. Who was it, do you know, that suggested that?

A. Somebody that was at the meeting that we had had when Van Camp was available, or when Van Camp was present at a meeting that you referred to earlier, and also by Vince Evich of Starkist.

Q. Was the suggestion to you or to Mr. McCook?

A. Well, the suggestion was made to me that everything appear—that everything appeared to be good now. If Governor—if the governor can move fast on this thing, then let him, with the catalyst.

Q. What did you mean by that, "catalyst"?

A. Well, the governor was the supreme being, speaking in hyperbole, down there, and it was up to him to initiate this, "Let's do it now."

Q. To the canners—

A. To everybody that was involved in this operation.

• • • • • • •

[211]

Q. • • • Did you write this letter [TU 76] to Mr. Shaw on or about August 25, '65?

A. Yes.

Q. In the first paragraph you refer to a meeting that had been set up with McCook and Governor Lee.

A. Yes.

Q. Did that meeting ever take place?

A. To my best recollection, no.

Q. Do you know why?

A. I do not.

Q. Did you make any inquiry or follow-up as to why it did not?

A. McCook was available, but I remember McCook telling me that it didn't take place.

• • • • • • • •

[215]

• • • • • • • •

Q. Was Summit the only one from whom you really had a proposal to offer Governor Lee?

A. All the majors—all the majors backed away, said they could not compete.

Q. Starting with UNOCO, then—

A. He was the only one that was eager to compete—

Q. Now, was—

A. —as an independent oil company.

• • • • • • • •

[216]

• • • • • • • •

Q. I have a document here that's numbered TU 073, and I don't know what it is. Maybe you can recognize it.

Q. This was one of the initial handwritten things which I typed up when Mr. Shaw was in my office in Beverly Hills, in which he penciled out a general profitability and payout, I think the — at the first meeting that I had in my office with Mr. Shaw.

• • • • • • • •

[220]

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CROSS EXAMINATION

• • • • • • • •

[225]

• • • • • • • •

Q. By Mr. Hollander: I show you a document that's been provided from the files of Mobil, marked M-18, and call your attention particularly to the last paragraph [Reference to Standard's supply contracts]. See if that refreshes your recollection of what any oil company gave you as a reason for not coming into the market with supply contracts.

[226]

A. I'm awfully—could you repeat that question? I was reading it.

(Whereupon the record was read.)

The Witness: Yes, both Shell and Mobil.

• • • • • • • •

Q. When Starkist and Van Camp talked to you about their requirements at American Samoa, did they also speak in terms of including the fishing fleet requirements?

[227]

A. Yes, that's the main thing.

• • • • • • • •

b. DEPOSITION: MARCH 23, 1971: WILLIAM R. McCOOK

United States District Court for the Northern District of California

United States of America, *Plaintiff*, vs. Standard Oil Company of California, *Defendant*.	Civil No. 52334

• • • • • • • •

WILLIAM R. MCCOOK, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

• • • • • • •

[4]

• • • • • • •

MR. KLITGAARD: Do you wish to show Mr. Lynn's appearance for the witness? I take it you are appearing today for the witness, Mr. Lynn?

MR. LYNN: Yes.

[5]

DIRECT EXAMINATION

By MR. KLITGAARD [Counsel for Standard]:

Q. Will you state your full name, please.

A. William Robert McCook.

• • • • • • •

[28]

• • • • • • •

Q. Did Mr. Turnbull from time to time send you copies of his correspondence from Governor Lee?

A. Yes.

Q. Did he send you copies of correspondence generally on this petroleum product distribution venture?

A. Yes.

Q. Did you discuss this with Mr. Turnbull from time to time?

A. Yes.

• • • • • • •

[58]

• • • • • • •

Q. Now, did Mr. Turnbull at any time have any discussions with you about actually refining petroleum products?

[86]

Q. What was Mr. Turnbull to receive for his efforts in the event you did put in a petroleum facility in American Samoa?

A. Well, that is a good question. It was really never discussed. Just that he would be compensated.

Q. By whom?

A. By me.

• • • • • • •

[93]

• • • • • • •

Q. Had you discussed the possibility of another company distributing petroleum products in American Samoa?

A. I just don't remember if we did or not.

Q. Was your plan of operation, Mr. McCook, to run the terminal yourself, to run the bulk plant facility?

A. Yes.

• • • • • • •

[107]

• • • • • • •

Q. Apart from the time you were in Samoa in February, 1964, did you have any meetings at all any time thereafter with any officials of the government of American Samoa or any representatives thereof concerning petroleum supply?

A. I doubt it. I don't think so. It's possible, but I don't think so.

Q. You have no independent recollection of any?

A. No.

• • • • • • • •

[117]

• • • • • • • •

Q. Directing your attention now, Mr. McCook, to a document previously marked DDX 133, which is a letter dated August 13, 1965, from William R. McCook to Governor H. Rex Lee, was this letter prepared by you?

A. Yes.

• • • • • • • •

[119]

• • • • • • • •

Q. Directing your attention to the third paragraph which says: "We have a firm commitment from Oceanic Petroleum Corporation of New York . . ." Do you see that statement?

A. Yes.

Q. Now, by Oceanic Petroleum Corporation were you referring to one of the Shaw enterprises?

A. I am sure I was, if those figures coincide. Do they?

Q. Yes.

Were the prices something that you took from this telegram the year before, June 12, 1964, or had you other price lists in between?

A. I am sure we had others. A year-old price list is not too valuable.

Q. Was this based on a current price list from Shaw?

A. Evidently it was. I am sure we wouldn't use a year-old one.

Q. In the reference to a firm commitment, did you mean a written contract already with Oceanic Petroleum?

A. Not necessarily a written contract, but evidently we had some sort of a commitment from them.

You have no copy of any commitment from Shaw?

Q. No.

A. You don't? Well, there is one around someplace.

Q. Did you have a commitment that was in writing; is that what you are telling us?

[120]

A. I thought so. Maybe it was verbal.

• • • • • • • •

Q. Now, was it your idea, as actually reflected in the letter here, to turn the whole facility back to the government?

A. That's correct.

Q. For $1 after 16 years?

A. That is correct.

Q. Was your lease to be 16 years?

A. 16 rather than six.

Q. A 16-year supply contract with the government?

A. No.

Q. Or a 16-year lease?

A. No, 16-year ground lease.

• • • • • • • •

[121]

• • • • • • • •

Q. In the bottom paragraph of this page you see the statement: "It has been suggested by 'Starkist' that you act as the catalyst in this proposal."

A. Yes.

Q. Now, does this refresh your recollection in any way that you had any discussions with Starkist personnel?

A. No, it doesn't, but we're getting warm.

[122]

Q. Well, how are you able to suggest then or mention that it was suggested by Starkist that Governor Lee act as the catalyst?

A. Through Ray, obviously.

Q. Did Mr. Turnbull tell you—

I assume "Ray" refers to Mr. Turnbull?

A. Yes.

Q. Did he tell you who had suggested this at Starkist?

A. No. He possibly did, but I don't remember.

• • • • • • • •

[125]

• • • • • • • •

Q. Directing your attention to a document previously marked as DDX 168—this is numbered TU-081 et seq, and appears to be some kind of a study or survey of the Samoan market—and I'll ask you to look through it. Have you seen this document before?

A. I'm sure I have, but I don't remember specifically, but it looks familiar.

• • • • • • • •

[128]

• • • • • • • •

Q. In your August 13th letter, DDX 133, the last page, you make the statement: "If the foregoing proposal is acceptable in principal, it is requested that a meeting be held"—referring to Governor Lee—"while you are still in the United States, for the purpose of discussing and finalizing arrangements and possibly executing a letter agreement between all interested parties."

Do you see that?

A. Yes.

[129]

Q. Did you contact Governor Lee after sending this letter or were you contacted by him?

A. No.

Q. Did you have any communications of any kind at all with Governor Lee after you sent this letter?

A. No, I never did.

• • • • • • • •

Q. Did you ever find out why Governor Lee didn't meet

[130]

with you?

A. No.

Q. Did Turnbull ever tell you why Governor Lee didn't meet with you?

A. No.

Q. Did you ever get any response to this letter from the governor?

A. I think I got a letter from him—no, I don't know if I did or not.

Q. Did you get a response from anyone connected with the government of American Samoa?

A. I don't remember if I did or not. It seems like something came in.

• • • • • • • •

Q. • • • You said in connection with this August 13th letter that it seemed to you that something came in. I am asking about your response. Do you recall what that was?

A. No, I don't.

Q. Was it a written document or writing of some kind, a letter?

A. I don't recall.

Q. Have you looked through your files to see if you have any response?

[131]

A. Yes.

Q. And you don't?

A. No, not that I can remember.

• • • • • • •

[132]

• • • • • • •

Q. Now, what happened after November 15, 1965? Did you make any further proposals to Governor Lee or to GAS for petroleum supply?

A. Do you have any records of it here?

Q. We have no documents past that date from you.

A. If they are not in these files, I evidently did not.

Q. Did Mr. Turnbull or anybody ever tell you what

[133]

happened to your proposal after this date of November 15th?

A. Of course they have.

Q. What happened?

A. Standard Oil lowered the prices and that was the end of our deal—below what we could deliver eventually.

• • • • • • •

[134]

• • • • • • •

Q. Was the only reason that you abandoned this is that Standard reduced the prices?

A. Because we were shot out of the saddle.

Q. Explain that.

A. We couldn't see any future. We couldn't sell it for as low a price as it appeared to be sold.

• • • • • • •

[135]

• • • • • • •

Q. If Standard was quoting 11.95, wasn't your price lower than Standard's?

A. What was it before that?

Q. It was 13.95.

A. It appears to me like we were fighting a losing battle because that was the first of what could have been several reductions in price. Obviously, I'm in no position to buck Standard Oil, and when Standard Oil reduced their price it did take a lot of sting out of it and evidently the governor might have had some pressure brought to bear. I don't know.

Q. Pressure by whom?

A. I have no idea, but obviously we weren't in a position to come in on a thin margin and then on a brand new venture have to maybe take another one or two price cuts.

Q. Was it your thought that you could get a long-term contract to supply the government power plant?

A. Yes.

• • • • • • •

Q. At a specific price?

A. Yes.

Q. And so, therefore, you had that business; is that correct?

A. We would have had that.

Q. Was that business, in your opinion, sufficient

[136]

inducement for you to come into American Samoa?

A. Not quite.

Q. What other reasons?

A. It was the backbone. There was no doubt about that.

Q. In other words, if you got the power plant business, there would have been sufficient inducement for you to come into American Samoa?

A. We would want a fair shot at the rest of the business. If we had a fair shot at the rest of the business and the power plant, we certainly would have gone.

• • • • • • • •

[138]

CROSS EXAMINATION

By Mr. Hollander [Counsel for United States]:

• • • • • • • •

Q. If you had gotten a part of the market, as you suggested, do you think you could have made a profit on your investment?

• • • • • • • •

The Witness: Well, let me just say this, that had I gone ahead with the investment, I certainly would have done it with a profit in mind, and I do know that having just the fuel for the generating plant was not enough to get me too excited to go over there and make a big investment, having to face some

[139]

awful—what could be some price cuts and a price war when you are opening up a new business. It is not very inducive to a newcomer.

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c. DEPOSITION: JULY 24, 1970: H. REX LEE

• • • • • • • •

[707]

• • • • • • • •

Mr. Mussman [counsel for Standard]: Would you mark as DDX 133 a letter from one William R. McCook to Governor Lee, dated August 13, 1965, and identified as TU 079.

[710]

• • • • • • • •

Tell me what you know about Mr. McCook, the Oceanic Petroleum Corporation, and his proposal.

A. I know virtually nothing about him.

Q. Do you know why he wrote this to you?

A. At this point I do not. I may have known it at

[711]

the time. • • •

• • • • • • • •

It is my recollection that his name was mentioned in relation to Summit. I have no knowledge of either Mr. Shaw or of Oceanic other than what we have discussed in the last two days on the basis of documents that you have introduced.

Q. Do you know who Mr. McCook was?

A. No.

Q. Have you ever met Mr. McCook?

A. I don't recall meeting Mr. McCook. I could have. It is very possible.

• • • • • • • •

[712]

• • • • • • • •

Do you recall following up on Mr. McCook's letter at all or even replying to it?

A. No, I do not, although it is entirely possible that Mr. McCook could have come to see me in Washington while I was there. It is entirely possible that he did. I simply do not recall any meeting. I do not recall Mr. McCook, but this doesn't mean that it didn't take place. • • • I think I would have recalled him if he had something that I considered very seriously and practically.

[713]

• • • • • • • •

It is entirely possible that Mr. McCook or one of his representatives came to Washington while I was here and we had a brief discussion and after the discussion, washed the proposal out.

Q. Is it possible that Mr. McCook was fronting for Turnbull?

A. It is entirely possible, but I have no way of knowing, because, as I say, I do not recognize the name McCook.

• • • • • • • •

[714]

• • • • • • • •

Q. What I wanted to find out is whether you knew this at the time, that perhaps because of Mr. Turnbull's involvement that you would not have proceeded with Mr. McCook.

A. If I had known at that time, I think I would have discounted the possibility of this being a bona fide thing that we wanted to follow through on.

• • • • • • • •

Mr. McCook himself may have come down to Washington, I may have had a meeting, and because of what I told him, he may have withdrawn any interest in it. It is entirely possible. Other people have done that.

[715]

Q. You have no recollection one way or another of either replying or meeting [with McCook]?

A. No, sir.

• • • • • • • •

[750]

• • • • • • • •

Mr. Mussman: Keeping all of this in date order, the next • • • is a document bearing the designation TU 051,

which is a letter from Mr. Turnbull to Governor Lee, dated November 15, 1965. I ask that it be marked as DDX 138.

[751]

• • • • • • • •

Q. What was the purpose of this letter, Commissioner?

A. I don't know. I am not quite sure what he is asking here. He seems to imply that he has submitted an agreement on behalf of Summit, which we discussed yesterday and which I told you I could not recall any details on. I don't know what he is asking me here, unless he is saying that we have an outstanding offer of some kind to the Government of American Samoa.

Q. In the third paragraph he says:

"Our agreement with Summit is in effect."

A. Yes, I don't know what his agreement with Summit is. I have no idea what his agreement with Summit was, if he, in [fact], had an agreement.

• • • • • • • • •

Q. Do you recall having any discussion with

[752]

respect to the matters discussed in this letter?

A. No, I do not.

• • • • • • • •

d. TRIAL TESTIMONY: JUNE 12-13, 1972: H. REX LEE

• • • • • • • • •

[317]

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Q. [By Counsel for Standard] You do not recall following up on this [Tu 46-47] at all?

A. No, I do not but again I do not want to foreclose the possibility that I did.

Mr. Turnbull was frequently referring people to me indicating that he had some kind of a deal worked out. People would make inquiry of me as to what the situation was.

Frequently their interest dropped after a brief discussion with me either by telephone or in person, and I just can't identify them individually. • • •

• • • • • • • •

[388]

• • • • • • • •

Q. • • • [D]id you not receive this proposal from Mr. McCook • • • which is [Tu 79-80]?

A. [Tu 79-80]? Uh-huh.

Q. Now, Mr. McCook was attracted to American Samoa by the efforts of Mr. Turnbull, was he not?

A. I do not know.

Q. You do not know?

A. I just do not recall Mr. McCook. I see there's a letter which I probably signed, but I don't—I don't

[389]

recall the details on it.

• • • • • • • •

Q. Now, did you follow up on this proposal, Governor Lee, and have a meeting with Mr. McCook as he suggested in the last paragraph of the letter?

A. I simply do not recall whether I had a follow-up meeting with him or not. I may very well have. If I received a proposal of this kind, I would probably check it out. I may have discussed it with him on the phone. He may have come to Washington or Pago Pago to see me, but I just—I just do not recall it.

• • • • • • • •

2. William R. McCook v. Standard Oil Company of California, et. al., United States District Court, Central District of California Civil No. 74 1190 HP

a. DEPOSITION: SEPTEMBER 23-24, 1975, FEBRUARY 11, 1976: WILLIAM R. McCOOK

United States District Court
Central District of California

WILLIAM R. McCOOK, *Plaintiff,* vs. STANDARD OIL COMPANY OF CALIFORNIA, et al., *Defendants.*	No. CV 74 1190 HP

• • • • • • • •

[3]

WILLIAM R. McCOOK,

having been duly sworn, testified as follows:

EXAMINATION

BY MR. KLITGAARD:

Q. Will you state your full name, please.

A. William Robert McCook.

• • • • • • • •

Q. Are you the plaintiff in the lawsuit entitled William R. McCook versus Standard Oil Company, et al.?

A. Yes.

• • • • • • • •

[4]

• • • • • • • •

Q. In connection with this deposition, Mr. McCook, the Defendant Standard Oil Company of California has served upon you and your attorneys a Second Request for Produc-

tion of Documents. This Second Request for Production of Document is dated August 18, 1975, and it requested

[5]

documents in various individual categories to be brought to the deposition room here today. • • • Do you have the Request for Production of Documents in front of you, Mr. McCook?

A. Yes.

• • • • • • • •

Q. Have you brought documents today to the deposition which fit the categories described in this request?

A. Yes.

• • • • • • • •

[7]

• • • • • • • •

Q. Directing your attention to Paragraph 2, you see the definition of "Documents" as used here includes ". . . all documents described above in the possession or under the control of the deponent, or of his partners, associates, employees, agents, experts, attorneys or representatives, whether or not prepared over the signature of the deponent or any of the above persons."

Do you see that definition?

A. Yes.

Q. In connection with producing your documents today which we have numbered SDX 92 to SDX 429, have you produced all the documents which come within this category described in Paragraph 2 except the documents on which you may claim privilege?

A. Yes.

• • • • • • • •

[10]

• • • • • • • •

MR. PALMIERI: Yes, as far as we know. Since the Notice refers to documents which may be in the control of an agent, we, of course, obtained documents from Mr. Turnbull. We just collected all of the documents.

• • • • • • • •

[11]

• • • • • • • •

Q. • • • In producing the documents today that have been marked 92 to 429, have you made an effort to collect these documents to the extent that they exist from any of these people just described, partners, associates, and so forth?

[12]

A. Yes.

Q. And as far as you know, are all the documents in the possession of any of these other people here today and marked within this set, 92 to 429?

A. As far as I know, you have all of them there.

MR. PALMIERI: I think the only possible reason for hesitancy might arise from the fact that there was probably a case and maybe some documents went to the Justice Department, and maybe Mr. Turnbull didn't get those back, but if there are documents which exist that relate to the subject matter of this case or deposition, we certainly don't know about them. We made a diligent search to collect all of the documents and they are all here as far as we know.

• • • • • • • •

MR. KLITGAARD: Q. And did you contact Mr. Lynn to ask him if he had any documents in response to this Second Request for Production of Documents?

A. Yes.

Q. Did he provide you with any documents?

A. He turned over all his documents earlier.

Q. He told you he had already turned them over to

[13]

you?

A. Yes.

Q. Did he turn them over to you or to your attorneys?

A. To the attorneys.

• • • • • • • •

[14]

• • • • • • • •

Q. • • • [D]id you make any inquiry or investigation into your own office files or personal files to see if there were documents responsive to the Request for Production?

A. Yes, I did.

• • • • • • • •

Q. Where were those files located that you looked into?

A. In the storage file in my garage.

Q. Is that at your home that we just described?

A. Yes.

Q. Were those documents in a four-drawer file cabinet?

A. Two-drawer fire file.

Q. • • • [W]ere the documents always in this storage file or were they taken from some other file at some other time and put into this storage file?

A. They were taken from my office, the old address in La Mirada some time back. I don't recall exactly, but

[15]

several years ago.

Q. What was that address?

A. 14400 East Firestone Boulevard, La Mirada, California.

• • • • • • • •

[16]

• • • • • • • •

When I sold my business, I moved a lot of personal files to that storage file in the garage.

Q. When did you sell your business?

A. 1968.

Q. Were the documents that we have had produced today moved from the office in about 1968 to your garage and put in a file cabinet?

A. Thereabouts.

Q. Have these documents been in that file cabinet ever since 1968?

A. Yes.

Q. Referring to the file cabinet in your garage?

A. Yes.

• • • • • • • •

Q. Would it have been possible for documents that came in concerning American Samoa to be placed in another

[17]

file or files in your office at East Firestone Boulevard?

A. It would be possible if they were misfiled.

Q. Have you made any search of the files at any time at the old address on East Firestone Boulevard to see if there were any documents that were misfiled that related to American Samoa?

A. When we moved within the last month, I went through all the rest of my files and scanned through and didn't see anything that pertained to Samoa.

Q. When you moved in 1968?

A. No. When we moved recently from La Mirada to Lynwood. That was a month ago.

• • • • • • • •

[19]

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Q. In other words, the four-drawer file cabinet at the East Firestone Boulevard address contained all correspondence, documents, written materials that did not refer to the advertising business?

A. Correct.

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[20]

• • • • • • • •

Q. Would you tell us what documents you cleaned out of the file in East Firestone Boulevard and brought to your two-drawer file at your home.

A. All of those documents pertaining to Samoa I moved to my home.

• • • • • • • •

Q. When you cleaned out the materials of the file at

[21]

the Firestone Boulevard office in the late 1960s and moved the materials, at least some of the materials to the file at your garage, did you leave the four-drawer file cabinet behind at the East Firestone Boulevard address?

A. I did.

• • • • • • • •

Q. Did you have occasion at any time after you transferred the Samoa documents from the four-drawer file at East Firestone Boulevard to the two-drawer file at your garage to check back into the four-drawer file at East Firestone Boulevard to see if there were any documents responsive to the call of the Second Request of Production of Documents?

A. Yes, I have.

Q. When did you do that?

A. On several occasions.

• • • • • • • •

[22]

• • • • • • • •

Q. Do you recall the Government suit brought against Standard, the one referred to a few minutes ago?

A. Yes, I do.

Q. In connection with that Government suit, did you or someone acting for you go back and look at the file at the La Mirada office, that is, the East Firestone office to see if there were any documents in there concerning American Samoa?

A. Yes, I did.

• • • • • • • •

Q. Did you find any documents at that time in the file drawer?

A. None.

[23]

Q. In your four-drawer file?

A. No.

• • • • • • • •

Q. After the search that you described a moment ago concerning the four-drawer file cabinet • • •, have you had occasions to look into the four-drawer file cabinet to see if there were documents responsive to the descriptions here in our Second Request for Production?

A. I have.

Q. When did you do that?

A. That would have been at about the beginning of this suit.

Q. About 1974?

A. I would say during that period.

Q. At that time was the four-drawer file cabinet still located in the office at East Firestone Boulevard?

A. It was.

Q. Did you find any documents in the file at that time concerning American Samoa?

A. Again, no.

• • • • • • • •

[24]

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Q. In the last month or so, has Ryan Consolidated Petroleum moved its office from East Firestone Boulevard to Wright Road in Lynwood?

A. Yes.

Q. And in connection with that move, did you have occasion to go through the documents in the four-drawer file?

A. Thoroughly.

• • • • • • • •

Q. When did you go through the file, the four-drawer file, this last time? Was it a month ago?

A. Within a month.

Q. Within the last month?

A. Yes.

Q. After the Second Request for production had been served upon you?

A. Yes.

Q. And you did not find anything in the file at that time that was responsive?

A. Nothing else.

• • • • • • • •

[26]

• • • • • • • •

Q. Did Mr. Lynn ever go into the four-drawer file cabinet at the East Firestone Boulevard address, either before you cleaned out the file and transferred the American Samoa files to your garage or after, to the present time?

A. Never.

Q. Mr. Lynn never physically went to the four-drawer file cabinet to make any search of the files for documents concerning American Samoa?

A. No way.

Q. Why do you say, "No way"?

A. Well, I just wouldn't allow it. That is all. No one gets into my files.

Q. Was there a lock to the four-drawer file cabinet?

A. Yes.

Q. Who had the key to the four-drawer file cabinet?

A. In the secretary's drawer.

• • • • • • • •

Q. Mr. McCook, did your secretary have instructions not to let anybody else into that file apart from yourself?

A. Not specific instructions. However, she would

[27]

never allow it.

Q. Why do you say she would "never allow it"?

A. They were my personal files; just goes without saying that you don't let any outsider, even your mother, into your personal files.

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Q. And we are covering now the period roughly 1960 until the date the files were moved this last month?

A. That is correct.

• • • • • • •

[28]

• • • • • • •

Q. Did Mr. Lynn ever go through the two-drawer file cabinet in your garage to look for documents for American Samoa?

A. Never.

Q. Did anyone acting for Mr. Lynn ever go through the two-drawer file cabinet in your garage looking for documents for American Samoa?

A. No.

• • • • • • •

[32]

• • • • • • •

Q. • • • Mr. McCook, the documents which you produced today came from the two-drawer file cabinet that you maintained in your garage; is that correct?

A. That is correct.

Q. By "came," I mean originated in those files and maybe passed through your attorney and then came to us?

A. That is correct.

MR. PALMIERI: Except for those that we have gotten from Mr. Turnbull.

• • • • • • •

[33]

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Q. In the Government suit, did you at any time have any communication with Mr. Hollander or representatives

of the Department of Justice concerning any files that he might have which related to American Samoa?

A. I can't remember whether it came through Mr. Hollander directly or through Mr. Lynn. I believe it was through Mr. Lynn. I know I had never met Mr. Hollander until the date I met you at Mr. Lynn's office in Newport Beach.

Q. That was the day your deposition was taken in the Government case?

A. Right.

Q. And had you ever talked to Mr. Hollander before that date?

A. I may have. Frankly, I don't recall.

• • • • • • •

[34]

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Q. Did you take documents from the two-drawer file cabinet in your garage and send them to Mr. Lynn?

A. Yes, I did.

• • • • • • •

[35]

• • • • • • •

Q. In delivering the files to Mr. Lynn, did you make a list of the documents that were in the files that you had delivered to Mr. Lynn, or did you just give Mr. Lynn the entire file relating to American Samoa?

A. I gave him the entire file.

Q. In other words, did you just physically extract the four or five folders involving American Samoa and bring them to Mr. Lynn?

A. Yes, I did.

• • • • • • •

[36]

• • • • • • •

Q. What did Mr. Lynn tell you that he wanted?

A. I think it was a request very similar to this.

Q. To this Second Request for Production?

A. Yes.

Q. Did he tell you that he wanted your documents concerning American Samoa and petroleum supply in American Samoa?

A. Yes.

[38]

• • • • • • • •

Q. Were you satisfied at the time you went into your files in the Government case you had withdrawn everything involving American Samoa from those files involving the petroleum business in American Samoa and delivered that to Mr. Lynn?

A. At that time I don't know whether I was satisfied or not, but I delivered all that I had.

Q. From that time to the present have you found any documents in your files that you did not deliver to Mr. Lynn that related to the petroleum business in American Samoa?

A. I don't think so.

• • • • • • • •

[39]

• • • • • • • •

Q. In other words, you delivered the documents to Mr. Lynn, he photocopied them, kept the photocopies, and returned the copies back to you?

A. I think that is exactly the way it happened. I know I got my documents back again.

• • • • • • • •

[40]

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Q. Did Mr. Lynn ever tell you at any time what he did with the copies of the documents that he had?

A. No. The subject never came up.

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[84]

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Q. I am going to hand you Document 92 and ask you to take a look at that document. Do you have 92 in front of you, Mr. McCook?

A. Yes.

Q. Document 92 is a plat or map that bears a date of 1-12-63 and which appears to have been prepared by the Government of American Samoa, Land and Survey Division; is that correct?

[85]

A. Yes.

• • • • • • • •

Q. Apart from the preparation for your deposition, have you seen a copy of this document at any time before today?

A. Many times.

Q. Was this one of the documents that was in your files?

A. I don't know if it was in my file or not, but I have seen it before.

Q. Where did you see it before? In other words, in whose possession?

A. It was either in Ray Turnbull's possession or mine. I may have had it or he may have had it. We both probably had it at one time or another because it is a pretty important document in what we were attempting to do.

Q. What do you mean by "a pretty important document"?

A. It pretty well laid out our plans for putting in our facilities in American Samoa.

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[90]

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Q. • • • Mr. McCook, I am going to hand you a document which has been marked SDX 101 and 102. 101 and 102 appear to be a list of petroleum products shipped into Pago Pago, American Samoa during two preceding years, and the period appears to be July 1, 1960 to June 30, 1961 and July 1, 1961 to June 30, 1962. Is that a fair description of the document?

A. Yes.

• • • • • • • •

Q. Have you seen either of these documents before today?

A. Yes, I am sure I have.

Q. When did you first see these documents?

A. That I couldn't tell you.

• • • • • • • •

[91]

Q. Was it during the period that you were discussing American Samoa with Mr. Turnbull?

A. Yes.

Q. Were these two documents here, 101 and 102, among the documents that you had in your two-drawer file?

A. I don't believe so. I think these must have been out of Ray's file, again.

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[124]

• • • • • • • •

Q. I would like to hand you a letter marked 137 which is a letter dated January 28, 1964 from Ross W. Moody to

Raymond C. Turnbull. Do you have this letter in front of you?

A. Yes.

• • • • • • • •

[125]

• • • • • • • •

Q. • • • you will see that this letter refers to a pier or a dock for American Samoa, does it not?

A. Yes.

Q. And again is this one of the subjects you discussed with Mr. Turnbull in connection with your plan to supply American Samoa?

A. Yes.

• • • • • • • •

[166]

• • • • • • • •

Q. I would like to hand you a document marked 177 which is entitled "Tanks for petroleum, American Samoa." This appears to be a typewritten original of a document, does it not?

A. Yes.

Q. Have you seen a copy of this document before yesterday or today?

A. Probably.

• • • • • • • •

Q. Do you recall whether you saw the document in connection with discussions with Mr. Turnbull?

A. That would be where I would have seen it.

Q. This document refers to tanks for petroleum in American Samoa. Would you have this document in connection with discussions with Mr. Turnbull concerning the construction of petroleum storage tanks?

A. Yes.

• • • • • • • •

[167]

• • • • • • • •

Q. Did you have discussions with Mr. Turnbull concerning the cost of petroleum storage tanks in American Samoa?

A. Yes.

Q. Was the cost of petroleum storage facilities in American Samoa one of the factors you considered in putting together your letter of August 13, 1965 to Governor Lee?

[168]

A. Yes.

• • • • • • • •

[182]

(Whereupon, at 9:00 o'clock A.M., Wednesday, September 24, 1975, the deposition of WILLIAM R. McCOOK was resumed. • • •)

• • • • • • • •

WILLIAM R. McCOOK

having been previously duly sworn testified further as follows:

EXAMINATION (Resumed)

By Mr. Klitgaard:

• • • • • • • •

[230]

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Q. Does Mr. Turnbull have any interest in the recovery that you may obtain, if any, from Standard in the present case?

A. I certainly intend to take care of him. He has done a lot of work as you can see. He has done a major amount

of legwork in both the beginning and this lawsuit. He will be well compensated, let me put it that way, if there is a settlement or a victory on our team.

Q. Or judgment for you?

A. Yes.

Q. In connection with Mr. Turnbull's acting as your legman in connection with the present suit, has he been acting as your legman for the preparation for the present claim against Standard, 1968 or 1969 to date?

A. Whenever that happened, yes.

[231]

• • • • • • • •

Q. Were you aware at any time in 1968 or 1969 that Mr. Turnbull had been talking to representatives of the Department of Justice regarding Samoa?

A. Yes.

Q. And he had given documents to the Department?

A. Yes.

Q. Was he acting again on your behalf about a possible claim against Standard?

A. Yes.

• • • • • • • •

[232]

• • • • • • • •

Q. In the period before Standard Oil was handed a judgment, Mr. Turnbull contacted, apparently, Mr. Winton and Mr. Lynn concerning a possible claim against Standard, do

[233]

you recall that?

A. Yes.

Q. Was he acting on your behalf in that connection?

A. Yes, he was.

• • • • • • • •

[239]

• • • • • • • •

Q. I would like to hand you now, Mr. McCook, a two-page document numbered 216 and 217 which is a letter dated April 7, 1965 from Turnbull to Governor Lee. Have you seen a copy of this at any time before two days ago?

A. Quite possibly I have.

[240]

Q. Do you recall when the first time was you saw this document?

A. No, but I would imagine the early part of 1965.

• • • • • • • •

[241]

• • • • • • • •

Q. Was Document No. 216, 217 among the documents in your two-drawer file cabinet in your garage?

A. It is possible it was. I am not certain.

• • • • • • • •

[245]

• • • • • • • •

Q. I would like to hand you now, Mr. McCook, a copy of a letter dated June 15, 1965 which is a letter from Mr. Turnbull to Mr. Shaw. Do you have this letter in front of you?

A. Yes.

Q. Have you seen a copy of this document before?

A. Yes.

Q. When was the first time you saw this document?

A. Back in 1965.

Q. Who showed you this document for the first time?

[246]

A. Mr. Turnbull.

• • • • • • • •

[251]

• • • • • • • •

Q. I am going to hand you now, Mr. McCook, a Document No. 227 which is a tissue paper letter signed by Mr. J. T. Shaw dated June 25, 1965, Shaw to Turnbull. Do you have this letter in front of you?

A. Yes.

Q. Have you seen a copy of Document 227 before today?

A. Yes.

Q. When was the first time you saw this document?

[252]

A. Most likely around the end of June 1965.

Q. Who showed you the document for the first time?

A. Ray Turnbull.

• • • • • • • •

[257]

Q. Let me hand you a Document No. 230, a letter dated August 4, 1965 from J. T. Shaw to you. Do you have this letter in front of you?

A. Yes.

• • • • • • • •

Q. Have you seen a copy of this letter or have you seen this letter before today?

A. Yes.

Q. When did you first see this letter?

A. Probably right after, a few days after August 4 when it was mailed to me.

• • • • • • • •

[264]

• • • • • • • •

Q. And was this Document 230, 231 one of the documents that you delivered to Mr. Lynn?

A. Undoubtedly I did.

• • • • • • • •

[271]

• • • • • • • •

Q. Was there a consideration given by you or by Mr. Turnbull or by anyone, to your knowledge, to supplying American Samoa out of Colon, Panama in connection with your venture?

A. There may have been a consideration at one time. We looked for several sources.

Q. Do you recall that Colon, Panama was one of the sources you looked for?

A. I recall the name but no details about it.

• • • • • • • •

[314]

• • • • • • • •

Q. I would like to ask you again, Mr. McCook, to take a look at Document No. 237 and 238. Do you have that in front of you?

A. Yes.

Q. This is the draft, right, of your proposal [dated August 13, 1965]?

A. Yes.

Q. Was this one of the documents that was in your two-drawer file cabinet?

A. It could have been; probably was.

Q. Was it one of the documents you delivered to Mr. Lynn?

A. Probably. If it was in my file, I delivered it to him.

• • • • • • • •

Q. If the draft was not in your file, would the only other place that it would have been be the file of Mr. Turnbull?

A. Yes.

[315]

Q. Directing your attention to 239, 240, I will ask if this is a copy of a document that was in your two-drawer file in your garage?

A. Yes.

Q. Was that a copy of a document you delivered to Mr. Lynn?

A. Yes.

• • • • • • • •

[321]

• • • • • • • •

Q. I would like to hand you now, Mr. McCook, a yellow piece of paper marked Document 246 and dated October 5, 1965. Do you have this document in front of you?

A. Yes.

• • • • • • • •

Q. And this was a letter dated October 5, 1965 from you to Governor Lee; correct?

A. Yes.

Q. And dictated by you?

A. Yes.

• • • • • • • •

[322]

• • • • • • • •

Q. In the next sentence you state, "I just wanted to drop you a note to let you know that I have the balance of the information we discussed on the telephone, covering our supplier's financial strength."

Do you see that?

A. Yes.

Q. Does this refresh your recollection that you had a conversation with Governor Lee sometime after the August 13, 1965 letter?

A. It certainly does. I don't remember it, though. That is frightening. I am not used to talking to Governors and not remembering it.

Q. Does it help you when you refer to "the balance of the information we discussed on the telephone"?

A. I remember the information, the financial statements that I sent along.

• • • • • • • •

[323]

• • • • • • • •

Q. Was Governor Lee making any inquiry regarding the financial strength of Mr. Shaw and his enterprises?

A. Evidently, he was.

Q. And what was the "balance of the information" that you referred to here in your letter?

A. It must have been his financial statement.

• • • • • • • •

Q. We didn't find any documents in the documents produced • • • in connection with this Second Request for Production of Documents where there is a transmittal of information to Governor Lee concerning the financial strength.

A. This must have been it. However, I don't see an enclosure on the copy of the letter. No, I didn't enclose it; that is right.

• • • • • • • •

Q. Did you send information on your supplier's financial strength to Governor Lee at a later date, do you

[324]

recall?

A. I don't recall.

• • • • • • • •

[335]

Q. Was Document No. 246 among the documents in your two-drawer file cabinet in your garage?

A. Yes.

Q. Was it one of the documents you delivered to Mr. Lynn?

A. Yes.

• • • • • • • •

Q. I would like to direct your attention now, Mr. McCook, to Document No. 247 which is a letter dated November 16, 1965 from the Governor of American Samoa, H. Rex Lee, to you. Do you have this document in front of you?

A. Yes.

Q. Document No. 247 is a signed original, is it not?

A. Yes.

• • • • • • • •

Q. When did you first see this document?

A. As soon as I received it in the mail, probably around November 20th.

Q. 1965?

A. Yes.

• • • • • • • •

[346]

• • • • • • • •

Q. Do you see in the upper left-hand corner "Tell Ray and file"?

A. Yes.

Q. Is that your handwriting?

A. Yes.

Q. Did you in fact tell Mr. Turnbull about this letter from Governor Lee?

[347]

A. I am sure I did.

• • • • • • • •

[349]

• • • • • • • •

Q. Mr. McCook, was Document No. 247 among the documents in your two-drawer file cabinet?

A. Yes.

Q. Was it a document that you delivered to Mr. Lynn?

A. Yes.

• • • • • • • •

A. • • • I may not have delivered this to Mr. Lynn.

Q. Do you know why you didn't deliver it to Mr. Lynn?

A. I don't think I found it until after the Federal case.

Q. Until after the Federal case began?

A. Yes.

Q. When did you find this document?

A. I am not sure, but I don't believe—I am sure it would have been used as an exhibit if it were.

Q. • • • Is it your recollection that the document was in the two-drawer file cabinet in your garage?

A. I think it could have been one of the misfiled ones.

Q. Did you find this document in a four-drawer file cabinet that you had in your old office?

A. Yes, I did.

Q. When did you find it in the four-drawer file cabinet?

[350]

A. Several months ago.

Q. Within this last year?

A. Within a year or two, yes.

• • • • • • • •

Q. After your deposition was taken in the Government case, did anyone go back and look in your four-drawer file

cabinet to find out if you had any documents in there concerning American Samoa?

A. Yes. I did.

• • • • • • • •

Q. A year after?

A. Yes, probably a year after.

Q. In other words, it was a year after your deposition?

A. I would just guess in that period of time.

• • • • • • • •

[351]

Q. And then did you find this document in your file cabinet at that time?

A. I believe so.

Q. What did you do when you found the document in your file cabinet? Did you send it to somebody?

A. Yes. I gave it to Kindel & Anderson.

• • • • • • • •

MR. KLITGAARD: Q. You found it at the East Firestone Boulevard address before you changed offices?

A. I think so. I am not positive on that, where I found it. I think it was in that four-drawer file.

Q. In any event in the time sequence you found it in the four-drawer file cabinet, it was at least a year, or about a year, after your deposition?

A. Approximately, yes.

Q. Do you recall your deposition was taken in March of 1971 in the Government case?

A. Maybe two years after, even.

Q. You found it two years after?

A. It could have been.

• • • • • • • •

[352]

• • • • • • • •

Q. What was the occasion for the search that turned up this document in your file cabinet?

A. Just in gathering more evidence for our case.

• • • • • • • •

[369]

• • • • • • • •

Q. Have you seen Document No. 276 through 296 before?

A. Yes.

Q. This appears to be a complete set, does it not, of the Partial Survey?

A. Yes.

Q. On Page 276 there is some handwritten notations. Do you see that?

A. Yes.

Q. Have you seen this handwriting before?

A. Many times. It is mine.

Q. All the handwriting on 276?

A. Yes.

• • • • • • • •

[370]

• • • • • • • •

Q. I would like to ask you to direct your attention to the first page, 276, which has the reference to Governor Lee, area code 212 and then there appears to be a

[371]

telephone number. Do you recall how you came to put that handwriting on the document?

A. Evidently, it was his phone number when he was in New York. That is a New York area code.

Q. Do you recall making a telephone call to Governor Lee at that number?

A. I vaguely recall it. I have no idea what the conversation was. I would have to do a little concentrating.

• • • • • • • •

[385]

• • • • • • • •

Q. Was Document No. 276 through 296 among the documents that you had in your two-drawer or four-drawer file?

A. Yes.

Q. Was it among the documents you delivered to Mr. Lynn?

A. Yes.

• • • • • • • •

[387]

• • • • • • • •

Q. How many documents did you discover in your [four-drawer] file cabinet when you made your later search?

A. Two or three.

Q. Single-page documents?

A. I don't recall what they were. They were just some information that I thought may have been pertinent to this case.

• • • • • • • •

[388]

• • • • • • • •

Q. If anyone had made a thorough search of the four-drawer cabinet, would they have discovered these documents in the "Miscellaneous File," the ones you discovered a couple of years ago?

A. Yes.

• • • • • • • •

[390]

• • • • • • • •

Q. I would like to hand you now, Mr. McCook, a copy of a document numbered 320, 321, and 322. Do you have these

[391]

documents in front of you, Mr. McCook?

A. Yes, I do.

• • • • • • • •

Q. Is the handwriting on 321 your handwriting?

A. The penciled writing is mine.

Q. That would be the penciled writing at the bottom?

A. Yes.

• • • • • • • •

[392]

• • • • • • • •

Q. When did you first see Document 321, Mr. McCook?

A. I am not sure when I did see that.

Q. Who prepared Document 321?

A. I would assume Ray Turnbull.

Q. Would anybody else have prepared it?

A. Not that I know of.

Q. Was 321 prepared before your August 13, 1965 letter to Governor Lee?

A. I would imagine so. It reads like it was.

Q. Why do you say that?

A. Because it is a pretty preliminary-type thing. That's the way it looks to me.

Q. You mean the matters referred to on Page 321 are of a preliminary nature concerning American Samoa Terminal?

A. Yes.

• • • • • • • •

[393]

• • • • • • • •

Q. Directing your attention to 321 which is the typewritten original, was this one of the documents in your two- or four-drawer files?

A. I would imagine it was.

Q. Was this one of the documents you delivered to Mr. Lynn?

A. Yes.

• • • • • • • •

[394]

• • • • • • • •

Q. And do you remember in the letter from Mr. Turnbull to Mr. Shaw of August 25th [1965] there was a reference to the fish companies being ready and waiting for Governor Lee?

A. Yes.

Q. Now, does that refresh your recollection as to when Document 321 was prepared?

A. No, it doesn't. It must have been around that time, however.

• • • • • • • •

[415]

• • • • • • • •

Q. • • • [D]o you recall earlier that you said you went

[416]

through your miscellaneous file in the four-drawer file cabinet and found some additional documents which might be helpful in connection with your present suit?

A. Yes.

• • • • • • • •

Q. Do you recall that one of those documents might have been the letter of November 15th from Governor Lee to you or November 16th, do you recall that?

A. Yes.

• • • • • • • •

Q. Will you look back at Document 246 which is your October 5th letter to Governor Lee. Do you have that in front of you?

A. Yes.

Q. Was this one of the letters that you discovered in your later file search of your four-drawer cabinet?

A. This particular document?

Q. Yes.

A. No.

• • • • • • • •

[424]

• • • • • • • •

Q. But between the time of October 29, 1969 and the date of your deposition in the Government case, which was March 1971, did Mr. Turnbull tell you that he had provided documents to the Department of Justice?

A. I can't be sure if he told me that or not.

Q. Were you aware of that, TU 1 through 100?

A. We certainly did all we could to help them. I will have to admit that.

Q. Documents TU 1 through 100 were provided to the Department of Justice; isn't that correct?

A. By Mr. Turnbull and myself.

Q. Did you provide them directly yourself to the Department of Justice?

A. No.

• • • • • • • •

Q. Did you bring some of these documents to Mr. Lynn and provide them indirectly?

A. That could have been. I provided my documents to Mr. Lynn, my attorney.

Q. Was it your understanding that these documents were going to be provided to the Department of Justice at that time along with whatever other purpose Mr. Lynn might

[425]

have for them?

A. Whether they were actually being provided, given to him, I don't recall exactly, but I know they were for their examination and use, if need be.

Q. By "their," you mean the Department of Justice?

A. Yes.

• • • • • • • •

[February 11, 1976] [448]

WILLIAM R. McCOOK,

having been previously duly sworn, testified further as follows:

EXAMINATION (Resumed)

By Mr. KLITGAARD:

Q. This is a continuation of your prior deposition, Mr. McCook, on the subject of the production of documents in the present case.

You recall that you are under oath?

A. I do.

• • • • • • • •

[513]

Q. I would like to hand you Document 1243-1297, which is a copy of the post-trial brief for the United States in the Government case, and which was produced by Mr. Turnbull. Do you have that in front of you?

A. Yes.

• • • • • • • •

[514]

MR. KLITGAARD: Q. Mr. McCook, do you have page [SDX] 907 in front of you?

A. Uh-huh.

Q. Do you see the question here beginning at page 13 [SDX 907], referring to paragraph 1 of the subpoena? Do you see that, line 13, page 907?

A. Yes.

• • • • • • • •

[574]

• • • • • • • •

Q. Then the next question:

"Q. And you have retained none of those documents that fit that description at this time?

"A. To my knowledge, I have given him my file, unless there might be a few miscellaneous things that may be filed elsewhere.

"Q. Have you taken a look in the files to see if there are documents?

"A. No.

"Q. Where are those files?

"A. It would be miscellaneous correspondence files. They would be in my office."

[575]

Do you see that?

A. Yes.

MR. KLITGAARD: Then Mr. Lynn comes in and makes his statement about looking in the files. As Mr. Lynn states:

"I think it is fair to state that I made more than a cursory examination of Mr. McCook's files recently, that is, within the last ten days, and I could find nothing in addition to that which had already been delivered here.

"MR. KLITGAARD: You are referring to the files at his office?

"MR. LYNN: I am referring to the single four-drawer file which is in his office and contains a myriad of subfiles, and I went through each one individually."

Do you see that?

A. Yes.

Q. Now—

• • • • • • • •

That is where the missing documents were?

A. Yes, they were under the miscellaneous correspondence files.

Q. And if he looked in those files, he would have found them?

A. That's correct.

[576]

Q. Directing your attention, now, Mr. McCook—

• • • • • • • •

THE WITNESS: • • • [W]e got to the point it would have been in miscellaneous correspondence in my office, and then evidently Lynn started talking and said what he had done and gone through all my files. So that is impossible.

MR. KLITGAARD: Q. Because if he had gone through them, he would have found the missing documents?

A. That's correct.

• • • • • • • •

[583]

• • • • • • • •

Q. Did Mr. Lynn ever discuss with you the content of Document 951-955?

A. Quite probably he did, but I didn't see the original.

Q. When you say "Quite possibly," are you saying that you have some recollection of him having discussed the content with you?

A. Well, I have a recollection of Mr. Lynn

[584]

questioning me continuously if I had any other documents, which I searched and researched and researched and never came up with any.

Q. These would be any other documents than the ones you turned over to Mr. Lynn in the beginning?

A. That's right, with the exception of those two when I was cleaning out my miscellaneous file.

Q. When you say "two" that you were cleaning out your miscellaneous file, are you referring to Document 247?

A. Yes.

Q. And are you referring to Document 320?

A. Yes.

MR. PALMIERI: What's 320?

THE WITNESS: 246.

MR. KLITGAARD: Q. In your prior testimony, Mr. McCook, you stated that Document 246 was not among the new documents you discovered in the four-drawer file. I will go back to your deposition in September and read you your testimony concerning Document 246.

* • • • • • • •

A. Those are the two I found.

Q. Let me go back and read your testimony so you can be sure of what you are testifying to now. I would like to direct your attention to page 416 of your deposition on September 24, 1975 at line 15 to line 23. Line 15:

[585]

"Q. Will you look back at Document 246, which is your October 5 letter to Governor Lee? Do you have that in front of you?

"A. Yes.

"Q. Was this one of the letters you discovered in your later search of your four-drawer cabinet?

"A. This particular document?

"Q. Yes.

"A. No."

THE WITNESS: No, that's not right.

MR. KLITGAARD: Do you wish to change your testimony now, Mr. McCook?

MR. PALMIERI: Assuming that that is his testimony. He is saying that that wasn't his testimony.

• • • • • • • •

THE WITNESS: I found two documents. That is one of them.

MR. KLITGAARD: Q. What is "that"?

A. 246 and 247 were the only two I found.

Q. Is it your testimony now, sir, at the present time, that you found Document 246 in your four-drawer file cabinet?

A. Under miscellaneous correspondence.

Q. And —

A. That's correct.

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[587]

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THE WITNESS: I recall I was shocked, and elated or—not—when I found these two.

[588]

MR. KLITGAARD: Q. Why were you shocked, Mr. McCook?

A. That they turned up in an odd spot, and there they were after all this search for files.

Q. Didn't they turn up in a file that Mr. Lynn said he had looked through?

A. Well, Mr. Lynn is wrong. He did not go through my miscellaneous correspondence file.

A. Well, I have a recollection of Mr. Lynn

[584]

questioning me continuously if I had any other documents, which I searched and researched and researched and never came up with any.

Q. These would be any other documents than the ones you turned over to Mr. Lynn in the beginning?

A. That's right, with the exception of those two when I was cleaning out my miscellaneous file.

Q. When you say "two" that you were cleaning out your miscellaneous file, are you referring to Document 247?

A. Yes.

Q. And are you referring to Document 320?

A. Yes.

MR. PALMIERI: What's 320?

THE WITNESS: 246.

MR. KLITGAARD: Q. In your prior testimony, Mr. McCook, you stated that Document 246 was not among the new documents you discovered in the four-drawer file. I will go back to your deposition in September and read you your testimony concerning Document 246.

* • • • • • • •

A. Those are the two I found.

Q. Let me go back and read your testimony so you can be sure of what you are testifying to now. I would like to direct your attention to page 416 of your deposition on September 24, 1975 at line 15 to line 23. Line 15:

[585]

"Q. Will you look back at Document 246, which is your October 5 letter to Governor Lee? Do you have that in front of you?

"A. Yes.

"Q. Was this one of the letters you discovered in your later search of your four-drawer cabinet?

"A. This particular document?

"Q. Yes.

"A. No."

THE WITNESS: No, that's not right.

MR. KLITGAARD: Do you wish to change your testimony now, Mr. McCook?

MR. PALMIERI: Assuming that that is his testimony. He is saying that that wasn't his testimony.

• • • • • • • •

THE WITNESS: I found two documents. That is one of them.

MR. KLITGAARD: Q. What is "that"?

A. 246 and 247 were the only two I found.

Q. Is it your testimony now, sir, at the present time, that you found Document 246 in your four-drawer file cabinet?

A. Under miscellaneous correspondence.

Q. And —

A. That's correct.

• • • • • • • •

[587]

• • • • • • • •

THE WITNESS: I recall I was shocked, and elated or—not—when I found these two.

[588]

MR. KLITGAARD: Q. Why were you shocked, Mr. McCook?

A. That they turned up in an odd spot, and there they were after all this search for files.

Q. Didn't they turn up in a file that Mr. Lynn said he had looked through?

A. Well, Mr. Lynn is wrong. He did not go through my miscellaneous correspondence file.

• • • • • • • •

[592]

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[601]

• • • • • • • •

Q. Was Document 321 among the documents that you discovered in your four-drawer file cabinet along with 247?

A. No.

• • • • • • • •

Q. I would like to show you now Document 276-296. Do you have that document in front of you?

[602]

• • • • • • • •

Q. Was 276-296 one of the documents you found in the miscellaneous file in your four-drawer file cabinet along with 247?

A. No.

• • • • • • • •

b. DEPOSITION: SEPTEMBER 25, OCTOBER 14, 1975: RICHARD B. LYNN

i. September 25, 1975

In the United States District Court
Central District of California

(Title omitted in printing)

• • • • • • • •

[3]

RICHARD B. LYNN,

called as a witness by the Defendant Standard Oil, and having been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION

BY MR. KLITGAARD: Q. Will you state your full name, please?

A. Richard Bertrand • • • Lynn.

Q. What is your business address, sir?

A. 4340 Campus Drive, Suite 203, Newport Beach, California 92660.

• • • • • • • •

Q. What is your occupation?

A. I am an attorney.

• • • • • • • •

[6]

• • • • • • • •

Q. In the period 1968 to date, have you represented Mr. McCook at any time in connection with the suit that was brought against Standard Oil Company of California by the

[7]

United States of America through the Department of Justice involving petroleum supply in American Samoa?

A. I represented Mr. McCook insofar as his inquiry with respect to the possible validity of a private civil action against Standard Oil is concerned.

• • • • • • • •

Q. What did you do in connection with that inquiry?

A. I undertook the responsibility for the making of an assessment with respect to the possible claim of Mr. McCook.

• • • • • • • •

[8]

• • • • • • • •

Q. • • • [Y]ou stated

[9]

that you referred to or associated with counsel in San Diego to consult with you on a possible claim by Mr. McCook against Standard Oil?

A. That's correct.

Q. What was the name of the firm?

A. The firm at that time was Sullivan, Marinos, Augustine & Delafield.

A. The transmittal letter indicating that I am returning herewith all of your documents?

Q. Right.

A. Not to my knowledge.

[79]

• • • • • • • •

Q. Did you make copies of this initial set of documents from Mr. Turnbull and sent copies of those documents to Mr. Sullivan or to the Lyle Jones or Sullivan firm in San Diego?

A. I sent either the originals or copies made by myself, one or the other, I am sure.

Q. If you sent the original to the Lyle Jones

[80]

firm in San Diego, did you retain a copy of that document in your files?

A. Correct.

Q. Then did the Lyle Jones firm in San Diego return any of those documents to you at any time?

A. Sometime in May of '71 they returned, to the best of my knowledge, everything that I had sent them.

Q. Were those documents transmitted to you along with their May opinion letter?

A. Either at or within a day or two, one way or the other.

Q. When those documents came back from the Jones firm in San Diego in May, 1971, what did you do with the documents?

A. I retained them in my office.

• • • • • • • •

Q. Then were these documents among the documents, that is the documents you got back from Lyle Jones, among the documents that you transmitted to Mr. Turnbull on February the 2nd, 1972?

A. Yes.

• • • • • • • •

[94]

• • • • • • • •

Q. In the period June, 1970 through August, 1970 on you received some documents, did you not, from Mr. McCook?

A. Correct.

Q. Those were documents that Mr. McCook delivered to you in response to your request for documents concerning petroleum supply in American Samoa from his files?

A. Correct.

Q. How thick were the documents that you received from Mr. McCook in this period?

A. I would say they were modest, maybe a quarter of an inch to a half an inch.

• • • • • • • •

Q. Coming to the end of August, 1970, in the period June, 1970 through August, 1970, did you send any of the McCook or Turnbull documents to the Sullivan firm?

[95]

A. Yes.

Q. By that we are referring to your letter of August 26, 1970 in which you sent the one document?

A. No, a substantial number of documents had been sent long before that request for additional information came from Mr. Jones or Mr. Sullivan.

Q. In sending the documents to the Sullivan firm, did you send documents that came from the set that you got the first day at Mr. McCook's office?

A. Some of them.

Q. Did you send documents that you got from Mr. Turnbull in his first turnover of documents?

A. I am sure I did.

• • • • • • • •

Q. Then did the Sullivan office return all of those documents to you with the May, 1971 opinion letters?

A. Yes.

• • • • • • • •

[96]

• • • • • • • •

Q. Apart from that request to Mr. Turnbull and

[97]

Mr. McCook for documents in the period from August, 1970 to [October] 1, 1970—that is until the date of Mr. Turnbull's deposition in the Government case—did you collect any further documents from Mr. Turnbull or Mr. McCook?

• • • • • • • •

A. I don't recall either requests for receipt of further documents during that period of time.

Q. Do you recall attending the Turnbull deposition on October 1?

A. Yes.

Q. After the Turnbull deposition, did you request Mr. Turnbull to provide any documents to you concerning petroleum supply in American Samoa?

A. I don't recall any other requests to trace or seek out on the basis of, you know, "Have you looked as far as you can look," or, "Are you sure you have given me everything," or, "We are looking for this letter specifically." I don't recall that kind of an inquiry of Mr. Turnbull or Mr. McCook.

• • • • • • • •

[132]

• • • • • • • •

Q. Later on [in April, 1971], you did report to Mr. Mussman that you had conducted a search of the McCook files specifically for any documents that related to the supply of petroleum products in American Samoa. Do you remember that?

A. Yes.

Q. In making that representation to Mr. Mussman, before you made that representation did you go back and make another search of Mr. McCook's file or are you relying just upon the search you made on this occasion in October through December?

A. I made only one search of Mr. McCook's files.

Q. In going through Mr. McCook's files on this

[133]

one occasion in his office, the La Mirada Boulevard office, did you find any documents in those files in addition to documents that you had already collected from Mr. McCook or Mr. Turnbull?

A. No, I did not.

• • • • • • • •

[136]

• • • • • • • •

Q. What about the five or six or whatever number of documents that you found in Mr. McCook's files; do you recall what they were?

A. To the best of my recollection, they were

[137]

copies of Mr. Turnbull's—some of Mr. Turnbull's correspondence directed to other persons and/or copies of certain of Mr. McCook's correspondence. • • •

• • • • • • • •

[140]

• • • • • • • •

Q. Did Mr. Turnbull tell you that he had turned over documents to the Department of Justice at any time?

A. Yes.

Q. When did he tell you that?

A. At the first meeting that we held in La Mirada in early June, 1970.

• • • • • • • •

Q. • • • Mr. Turnbull turned over documents to you in the period June, 1970 through August 19,

[141]

1970. Did [Turnbull] tell you that these were the same documents that he had turned over to the Department of Justice?

A. I think his statement was probably that the Justice Department had photocopied either all or substantially all of his file and I honestly don't know whether that event occurred in Los Angeles or in Washington, D.C. or San Francisco or what.

• • • • • • • •

[142]

• • • • • • • •

[Q.] • • • I just wanted to be

[143]

sure that when Mr. Turnbull turned over the documents to you in the period June, 1970 through August 19, 1970, that he told you or informed you that this was the same file that he turned over to the Department of Justice earlier.

A. I am sure that he made that representation.

• • • • • • • •

[149]

• • • • • • • •

By Mr. Klitgaard: Q. In connection with the Turnbull deposition, Mr. Lynn, • • • do you see your transcript here of the testimony of your statement at the Turnbull deposition in October, 1970?

A. Yes.

Q. Do you see the statement that you made that you went through the files of Mr. Turnbull?

A. Yes.

Q. Did you physically go through the files of

[150]

Mr. Turnbull to select out documents relating to American Samoa and petroleum supply in American Samoa?

A. Yes.

• • • • • • • •

Q. • • • [W]hat I am trying to draw a distinction between, had you gone through Mr. Turnbull's files yourself in the same manner that you made a search of Mr. McCook's files or did you simply receive from Mr. Turnbull documents that he extracted from the files?

A. I'm correct that no, I never physically went through the steel file cabinets in Mr. Turnbull's office. No, I did not.

Q. In other words, all that you received from Mr. Turnbull were documents that he delivered to you?

A. That he indicated to me were the totality of

[151]

his papers.

• • • • • • • •

Q. You will see in Mr. Mussman's letter, which is 555 to 557, a reference to a request for search of the files of Mr. Turnbull, correct, in the first paragraph?

• • • • • • • •

Q. "You said that you would personally make the search for me and would furnish me with copies of all documents meeting this description"?

A. Yes.

Q. Well, did you in fact after receiving this November 9, 1970 letter at any time thereafter [to] the present time make a search of Mr. Turnbull's files, physical search of Mr. Turnbull's files for any documents?

A. Not before or after.

Q. After receiving this November 9, 1970 letter, did you ask Mr. Turnbull if he had any documents in his files

[152]

in addition to ones he had already produced?

A. I did.

Q. What did he tell you?

A. That he had nothing further.

• • • • • • • •

[159]

• • • • • • • •

Q. In the first sentence of this document [SDX] 425 you refer to a search during the week of April 17, 1971.

A. Mr. Klitgaard, it says here, "Please be advised Messrs. Turnbull and McCook files examined week ending 4-17-71."

Q. What did you mean by examined?

[160]

A. Meant that the files in my office were again examined in response to Mr. Mussman's request to me about my own independent judgment respecting relevancy. I did not physically leave my office prior to writing this wire in response to Mr. Mussman's inquiry regarding the question of relevancy.

• • • • • • • •

[161]

• • • • • • • •

Q. In responding to Mr. Mussman's request [April, 1971], did you go back and look at the files of documents that you collected from Mr. McCook and Mr. Turnbull over this period since June, 1970 and determine if there were any additional documents in those files that related to petroleum supply in American Samoa, other than documents TU 1 through TU 100?

A. I am sorry, Mr. Klitgaard. I really—I am not sure whether I can answer that yes or no. Would you ask the court reporter to read it back?

(Record read.)

• • • • • • • •

MR. PALMIERI: Are you talking in April?

BY MR. KLITGAARD: Q. Yes, April 1971.

A. Yes, I did re-examine the file with that thought in mind.

Q. Did you discover any additional documents in the file at that time in addition to documents which were TU 1 through TU 100 and in addition to the couple of documents that were marked at Mr. Turnbull's deposition in October, 1970, which related to petroleum supply in American Samoa?

MR. PALMIERI: Do you mean the files that he had?

MR. KLITGAARD: Referring to Mr. Lynn's files first.

[162]

THE WITNESS: My response to Mr. Mussman, which is Number 425, speaks to that and it states merely that he has my assurance there are no further documents.

• • • • • • • •

Q. In connection with sending document Number 425,

[163]

did you go back to the office of Mr. McCook and look back down through the files in his office?

A. I just stated to you that I did not.

• • • • • • • •

Q. Did you look at any files in Mr. McCook's garage to see if he, McCook, had any documents in addition to those mentioned?

A. No.

• • • • • • • •

Q. Did you look at any files in Mr. Turnbull's office to see if he had any documents in addition to TU 1 to 100 and in addition to the two documents or three documents produced at his deposition in October?

A. No.

• • • • • • • •

Q. • • • I have a letter dated January 13, 1971, Mr. Lynn.

• • • • • • • •

Do you have that in front of you?

A. I have it.

• • • • • • • •

[164]

• • • • • • • •

Q. In writing this letter, was it your intention to include the McCook file within the Turnbull file?

A. I think yes.

• • • • • • • •

ii. October 14, 1975

[44]

• • • • • • • •

Q. Just so there is no misunderstanding, Mr.

[45]

McCook testified at his deposition that he delivered some documents to you at about this time in August, 1970, or sometime in the fall of 1970, which you copied. Do you recall that incident?

A. No, I don't. I honestly don't know what reason I would have to copy papers, because my function was not to make an analysis of it, but merely to try to place papers, you know, in the hands of the attorney who was charged with the responsibility of making the analysis.

• • • • • • • •

[47]

• • • • • • • •

Q. Let me ask you a more general question. At any time, sir, did you ask Mr. William R. McCook to turn over

[48]

to you documents that he had in his files concerning petroleum supply in American Samoa?

A. Yes.

Q. When did you ask him that?

A. Probably within an hour before I sent Mr. Mussman that wire.

Q. This was the wire of April 24, 1970?

A. Right, when I wanted to be on fairly good ground before I sent a wire saying that, as far as my client had represented to me, that he, Mr. Mussman, or Mr. Jones or Mr. Hollander had everything.

• • • • • • • •

[50]

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Q. In connection with telegram 425, did you ask Mr. McCook before sending this telegram to Mr. Mussman if he, Mr. McCook, had any documents in his files concerning petroleum supply in American Samoa which were in addition to or different than documents TU-1 to 100?

A. I am sure I didn't reference them by number. I am almost positive that before sending this wire, I examined the McCook and Turnbull files, as I stated, in my office, and that I went a step further and called.

Q. Called whom?

A. Mr. McCook, you are referencing now. Additionally, I am sure I called Mr. Turnbull and said, "I want to give Mr. Mussman assurances that there is no more documents fleeting around. Can you give me that assurance?"

[51]

Q. No more documents than that in TU-1 to 100?

A. No, I just said documents categorically. I am sure no more papers were referenced to the distribution of oil in American Samoa to which Mr. McCook and Mr. Turnbull said, "Not as far as I know," which then prompted the sending of this telegram.

• • • • • • • •

[58]

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Q. Did you ask Mr. McCook specifically at any time between the Turnbull deposition on October 1, 1970, and the date of this January 13, 1971, letter if Mr. McCook had

[59]

any documents in addition to those marked TU-1 through TU-100?

A. Yes, I did.

Q. What did Mr. McCook tell you?

A. He said, "Why don't you go look for yourself?"

Q. You went and looked for yourself in the files?

A. That's correct.

[80]

• • • • • • • •

Q. Did you make a list at any time of the documents that you received back from the Sullivan firm in San Diego, up until the date of Mr. McCook's deposition in March, 1971?

A. Other than correspondence from Mr. Jones and other than TU-01 through 100, it is not my present recollection that I had at the time received anything from San Diego.

• • • • • • • •

[106]

• • • • • • • •

Q. Was your inquiry to Mr. McCook, Mr. Turnbull and Mr. Jones or to the Sullivan firm [in April, 1971] addressed to whether there were documents in addition to TU-1 to 100?

• • • • • • • •

A. It was—I am sure that by that time, probably all references were to this bundle of 1 through 100.

Q. So, is it your testimony that your inquiry to McCook, to Turnbull and to the Sullivan firm was addressed to documents in addition to TU-1 through 100?

A. Yes.

Q. Your answer was that they didn't have any; is that correct?

A. Yes.

• • • • • • • •

[113]

• • • • • • • •

Q. I'd like to hand you now documents number 945 and 946.

A. I have 945 and 946 [copies of letter or telegram dated 4-16-71].

• • • • • • • •

[114]

• • • • • • • •

Q. Do you see the • • • statement that, "Lynn also advises that Turnbull turned over his entire file to you from which you extracted documents numbered TU-1 to TU-100"?

A. Right, the same statement that Mr. Turnbull had previously made. Sure.

Q. Had Turnbull made that statement to you?

A. He had made it in my presence at his deposition.

Q. I don't recall whether that was on the record or off the record or not, but do you recall this particular

[115]

statement being made by Mr. Turnbull?

A. You know, I was aware • • • that long before my awareness of the transaction that Mr. Turnbull had, in fact, been contacted by the Department of Justice and had given them certain documents.

Q. Well, this says Turnbull turned over his entire file.

A. I think that is a statement that Turnbull had made to me. That's correct.

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[118]

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Q. Did you have any communication with Mr. Hollander concerning this particular letter [dated April 19, 1971], which is marked 951 to 955?

A. I am reasonably sure I talked to Mr. Hollander between the 19th and the date of sending that telegram.

Q. Which was April 23rd?

A. Right.

Q. Did you talk to Mr. Hollander concerning this letter, 951 to 955?

A. Yes, I am sure that it was alluded to.

Q. Would you tell us, to the best of your recollection, what you said to Mr. Hollander and what Mr. Hollander said to you?

A. I think that Mr. Hollander indicated to me that he had, in response to Mr. Mussman's penultimate:

• • • • • • • •

• • • paragraph given the confirmation that Mr. Mussman said that he felt it was all that he needed, and we undoubtedly discussed generally if either of us felt that there was anything else anywhere, to the best of our knowledge.

Q. What did you say to Mr. Hollander in that connection?

A. I said in that connection I felt that I had nothing more than that which had already been—and I hesitate

[119]

to use the word produced, but that had been referenced as 1 to 100.

Q. TU-1 to 100?

A. Right.

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[120]

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Q. Do you recognize 956, 957 as the telegram [April 23, 1971] that you sent to Mr. Mussman?

A. Yes.

• • • • • • • •

[121]

• • • • • • • •

Q. Do you see the last sentence that, "This assurance is unequivocal and is in no manner dependent upon my independent judgment respecting relevance"?

A. Yes, I see the statement. That was in response to Mr. Mussman's questioning me about, you know, my judgment respecting relevance.

Q. This goes to the fact that he wanted anything regarding petroleum supply in American Samoa without regard

[122]

to your judgment of whether or not it was relevant?

A. Right, correct.

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[139]

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Q. I am going to hand you now, sir, document 537. Do you have that document in front of you?

A. Yes.

[140]

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Q. • • • In the first paragraph, you refer to forwarding some documents to Mr. Turnbull under separate cover. Do you see that?

A. I actually say, "I am forwarding all of the documents."

• • • • • • • •

Q. As a matter of fact, did you keep back some documents in connection with the claim against Standard involving American Samoa?

A. There was some correspondence, and I think probably some duplicates of papers that were retained, yes.

Q. These were the documents that we marked here at your deposition at the last session on September 25?

A. Yes, that's correct.

• • • • • • • •

c. DEPOSITION: NOVEMBER 24-26, DECEMBER 1-2, 1975, JANUARY 28, 1976: RAYMOND C. TURNBULL

In the United States District Court
Central District of California

(Title omitted in printing)

• • • • • • • •

[3]

RAYMOND C. TURNBULL,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

By Mr. Klitgaard:

Q. Will you state your full name, please.

A. Raymond C. Turnbull.

• • • • • • • •

[17]

• • • • • • • •

Q. Are you appearing here today pursuant to a subpoena duces tecum?

A. Yes.

• • • • • • • •

Q. I would like to direct your attention to

[18]

attachment A of the subpoena duces tecum which requests that you bring documents with these descriptions to the deposition today. Have you brought with you documents that are responsive to these descriptions?

A. They were submitted before plus what I have here.

Q. When you say "submitted before," what do you mean by that?

A. Well, did I submit these things before?

MR. PALMIERI [Counsel for Mr. McCook]: I think what the witness means is that you in the subpoena of Mr. McCook asked for all documents that he may have had, plus whatever Mr. Turnbull had, so I think Mr. Turnbull is speaking about that. He submitted documents in connection with Mr. McCook's deposition.

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[20]

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MR. KLITGAARD: Q. • • • [Y]ou have a series of documents on the table in front of us, Mr. Turnbull, and these are documents that I take it you are producing today in response to the subpoena?

A. That's all I have.

• • • • • • • •

[21]

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MR. KLITGAARD: We have marked the documents which Mr. Turnbull has produced and turned over to us, as to which no claim of privilege is asserted, as Documents No. 981 through 1201.

• • • • • • • •

Q. Apart from Documents No. 981 through 1201, Mr. Turnbull, do you have any documents in your possession or in the possession of any of your associates, partners, agents, employees, attorneys or representatives, which are responsive to the call of the subpoena duces tecum, putting to one side for a moment any documents to which you may assert a claim of privilege?

A. No.

• • • • • • • •

[26]

• • • • • • • •

Q. Do you have Document No. 430 to 433 in front of you, Mr. Turnbull?

A. Yes, I have them.

Q. Who wrote Document 430 to 433 and to whom is it addressed?

A. It is addressed to me, 8681 Wilshire Boulevard, signed by Howard L. Winton, attorney.

Q. And the date of the document is November 28, 1969?

A. Yes.

• • • • • • • •

[27]

• • • • • • • •

Q. Just read through the document and I am going to ask you if having reviewed the document your memory is refreshed as to the circumstances which led you to the preparation of that letter?

A. I must have had a meeting according to the second page, and he must have seen some of my papers at the time.

• • • • • • • •

Q. Did you have occasion to meet with Mr. Winton before November 28, 1969, Mr. Turnbull?

A. I would say yes from reading the second page.

Q. And what led you to meet with Mr. Winton before November 28, 1969?

A. • • • Somebody recommended that I call him to find out whether there was any damages involved in the Samoa affair caused by Standard.

• • • • • • • •

[28]

• • • • • • • •

Q. And in contacting Mr. Winton in connection with these damages, were you acting on behalf of Mr. McCook—

A. Yes—not—yes.

Q. —at the time?

A. Yes.

• • • • • • • •

[29]

• • • • • • • •

Q. Do you recall bringing documents to Mr. Winton's office?

A. Pardon me?

Q. Do you recall bringing documents from your files to Mr. Winton's office?

A. I don't recall it. I could have.

Q. In the letter does Mr. Winton refer to documents that you may have brought to him?

A. He says, "From my review of the files and discussions with you"—

Q. Having in mind that reference by Mr. Winton, do you recall bringing your files to—

A. Not all of them, but I remember some key documents, and I say, I don't know whether those were the papers that emanated from that San Francisco trial.

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[31]

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Q. Well, did you have some files in your office involving petroleum supply in American Samoa?

A. Yes, but those—any documents that I had at that time would have been out of context with an evaluation. I can't see me taking the prices of petroleum, prices in American Samoa—that wasn't the theory at the time. It was were there any damages.

Q. Is it your testimony that your contact with Mr. Winton was to find out if there was a legal basis for claiming any damages in Samoa as opposed to an attempt to determine if Standard was wrongful for any misconduct in American Samoa?

A. I wanted to see if there was any basis for a suit for damages.

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[37]

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Q. In 1965 did you have an office in Los Angeles?

A. Yes.

• • • • • • • •

[38]

Q. What was the address of that office?

• • • • • • • •

A. • • • 8530 Wilshire Boulevard, Suite 309.

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[48]

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—Q. Did you maintain any files with correspondence or other documents in them concerning petroleum products?

A. My first effort was with Union, Union Oil Company, which then turned over to Unoco, a wholly-owned subsidiary of Union in Hong Kong, but the first opening was with the Union Oil Company.

Q. I am not trying to find out at all what was the substance of your conversations with Unoco and Union, I am simply trying to find out where you kept documents concerning—

A. They would have been in one place. They

[49]

wouldn't have been spread.

Q. Where was that one place?

A. 8530 Wilshire.

• • • • • • • •

Q. And were these documents kept in a file cabinet?

[50]

A. Yes.

• • • • • • • •

[51]

• • • • • • • •

Q. Did the files that related to petroleum supply in American Samoa have any title on them or label?

A. There would have had to be a label, or I still wouldn't have found them. I can't tell you what they are. Later they got to be Standard Oil and Star-Kist and VanCamp and correspondence and things like that.

• • • • • • • •

[59]

• • • • • • • •

Q. In the period that you were at 8530 Wilshire Boulevard, did you receive any documents from Mr. McCook concerning petroleum supply in American Samoa?

A. Receive any documents?

Q. Correspondence or other materia?

A. Yes.

Q. And did you put those documents in the four-drawer file cabinets?

A. They would have been in the file, yes.

• • • • • • • •

[60]

• • • • • • • •

Q. In 1965 when you changed addresses up to Holloway Drive, did you take the four-drawer file cabinets with you?

A. Yes.

• • • • • • • •

[64]

• • • • • • • •

Q. • • • Did you receive correspondence at that office, the Holloway Drive office, concerning petroleum supply in American Samoa?

A. Yes.

Q. And did you send out correspondence from that office?

A. Yes.

Q. And was that correspondence involving petroleum supply filed down by you as you sent it or received it?

A. Yes.

Q. In the four-drawer file cabinets?

A. Yes.

Q. Was it filed anyplace else—the correspondence that you got or received at the Holloway Drive—

A. You mean duplicates of them?

Q. Yes.

A. No, or any other part of it, anything connected would have gone into the file.

• • • • • • • •

[67]

• • • • • • • •

Q. When you moved from the Holloway Drive address down to 8681 Wilshire Boulevard, did you continue to maintain your files in the same way that you had before, as far as petroleum supply in American Samoa went?

A. Uh-huh.

Q. In other words, when you sent out a document

[68]

or a letter concerning petroleum supplies, you stuck that letter in the file?

A. Yes.

Q. And when you received a letter concerning petroleum supply, you put that letter in the file?

A. Yes.

• • • • • • • •

[69]

• • • • • • • •

Q. Mr. Turnbull, let's go back a moment and see if we can't get the time frame. The government filed this Complaint in the government antitrust suit against Standard of California on September 30, 1969. How did you hear that the government had sued Standard?

A. I was in Samoa at the time, and it was in the local newspaper which is in the file here somewhere.

• • • • • • • •

[71]

• • • • • • • •

Q. Until the first time you learned about the suit being filed, did you have any communications with Mr. Hollander concerning petroleum supply in American Samoa?

A. I can't tell you the date that he called me from Washington and asked me about my file. The first time he contacted me—I can't tell you the dates.

Q. Did he contact you after this trip that you were in American Samoa?

A. Yes.

• • • • • • • •

Q. You were there in October, 1969?

[72]

A. Yes.

• • • • • • • •

Q. And then after you got back to the United States, were you contacted by Mr. Hollander?

A. Yes.

• • • • • • • •

[76]

• • • • • • • •

Q. Did he contact you at your office at 8681 Wilshire Boulevard?

A. Yes.

• • • • • • • •

Q. What did Mr. Hollander say to you in this conversation?

A. He said that Governor Lee's files were incomplete, and he wanted to take a look at my complete file.

Q. Was this a telephone call?

[77]

A. I believe it was.

Q. Was Mr. Hollander calling you from Washington?

A. Yes.

Q. Did he identify himself as a lawyer with the United States Department of Justice?

A. Yes.

Q. Then did Mr. Hollander ask if he could come out and see your files?

A. Yes.

• • • • • • • •

It was right out of the blue.

Q. In other words, you had not contacted Mr. Hollander?

A. No.

Q. Had you ever heard of Mr. Hollander before the time of this telephone conversation?

A. Not that I remember.

• • • • • • • •

[78]

• • • • • • • •

Q. Then did Mr. Hollander come out to your office on Wilshire Boulevard?

A. Yes.

Q. And where were your files when he came to your office? Were they in the file cabinet?

A. Yes.

Q. What did you do when he—

• • • • • • • •

A. • • • He told me what he wanted. He said, "I want your whole file," and I said, "Look, I am up to my neck in all kinds of stuff, and it can be stuffed in all kinds of files," so I started pulling all the files.

Q. All the files?

A. All the files that I thought pertained to American Samoa and petroleum.

Q. Would these be also the files where you might have filed the document that contained a reference only partly to petroleum and partly to something else?

A. I believe it would have contained that, too.

Q. And was Mr. Hollander in your office while you were pulling the files?

[79]

A. Yes.

• • • • • • • •

Q. What files did you pull out and have available for Mr. Hollander?

A. Well, everything that was apparent on the leaf here.

Q. On the leaf on the folder?

A. Yes.

• • • • • • • •

Q. Did you collect these files in a pile on your desk before you gave them over to Mr. Hollander?

A. Yes.

Q. How thick were the files that you gave to Mr. Hollander?

A. I would say about that high (indicating).

• • • • • • • •

[80]

• • • • • • • •

Q. [W]ere the files about a foot high?

A. No.

Q. About six inches high?

A. I'd say yes.

Q. And were the files in more than one file folder?

A. Oh, yes.

Q. About how many file folders, do you recall?

A. Oh, eight or nine.

• • • • • • • •

Q. Did Mr. Hollander look through the folders right in your office?

A. He glanced—yes, he glanced through them. Not—he didn't get down and study them, but he glanced through them and then put them in his briefcase.

Q. And took them with him?

A. And took them with him.

Q. Did you make any list of the dates or numbers of the documents?

[81]

A. I wish I had, but I didn't.

Q. Did Mr. Hollander take the file folders as well as the documents in the folders?

A. Yes.

• • • • • • • •

Q. Anybody else in the room besides you and Mr. Hollander?

A. No.

Q. About how long did this meeting last?

A. Well, it went quite rapidly, less than a half an hour.

Q. Did Mr. Hollander number any—

A. No.

Q. —documents while he was in your office?

A. No, no.

• • • • • • • •

Q. Did Mr. Hollander give you a receipt for the documents?

A. I don't remember getting any receipt from him on it, no.

Q. What did he say to you when he was at your office as best you can recall?

[82]

A. Well, of course, he had identified himself before, and that is the reason he came into the office, and he said that they wanted the file, that Governor Lee's file was not complete, and he didn't know where he had filed all his stuff, and so they wanted my file.

• • • • • • • •

Q. Apart from the documents that we have numbered today at the deposition—

A. I'm tapped out. I have no more.

[83]

Q. —you have no more documents?

A. Nothing.

• • • • • • • •

Q. • • • When Mr. Hollander came to your office in 1969, you made available a number of files which he took back to his office; correct?

A. Yes.

Q. Then when Mr. Hollander left, did he have a telephone conversation with you again after that about returning the documents back to you?

A. Could have been. I'm not—it's not fresh in

[84]

my mind.

Q. If you look at Document 429, which is this letter of July 20, 1973, do you see where Mr. Hollander references returning documents to you on November 3, 1969?

A. Yes.

Q. Did Mr. Hollander bring the documents, the folders, back to you at your office on—

A. I thought they were mailed.

• • • • • • • •

Q. Do you recall having any other meeting with Mr. Hollander at your office at 8681 Wilshire Boulevard other than this one instance where you gave him your files?

A. No, but in the back of my mind, there is—I thought he was there twice, and I can't tell you why, whether he

made his pitch to get the papers first and then came back within a reasonably short time and picked them up. I don't know, but he—I believe he mailed all these things back.

• • • • • • • •

Q. When he mailed the folders, the papers, back to

[85]

you, what did you do with the—

A. I just left them in the same container and didn't check them, because I had no rundown on what I had given him, and just took them and put them back in the file in the same—in the same folder that he had mailed them to me.

Q. When you got the documents back from Mr. Hollander, were any of those documents numbered with TU numbers, or were they just the same documents you had sent to him without numbering?

A. Frankly, all I did was open it up to see that they were the documents he sent back, and didn't make—I didn't read anything. I just shuffled through them and stuck them in the file.

Q. Did you see any—

A. I don't remember.

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[87]

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Q. Did you pull the documents from the files yourself to give to Mr. Hollander, or did you ask someone else to do that?

A. No, I did it.

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[88]

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Q. • • • Now, in talking about when you collected the documents from your files to give to Mr. Hollander when he

came to your office, how did you check to make sure that the documents you gave him did in fact relate to petroleum products?

A. Well, if they had anything to do with petroleum products, I would look through to see—like this—and laid that aside, pick up another one and look, and if it

[89]

had nothing to do with it, I would put them back in the file.

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[91]

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MR. KLITGAARD: Q. • • • When Mr. Hollander came to your office and the documents were pulled for him, were the documents on your desk in separate file folders?

A. No, not all of them.

Q. Were some of them in file folders?

A. Yes.

Q. And did Mr. Hollander take the file folders with him as well as the loose documents?

A. Yes.

Q. When Mr. Hollander returned the documents, did he return the file folders as well as the loose documents?

A. I don't think so. I don't remember getting the file folders back.

Q. In other words, • • • he took the documents, some of which were in file folders, some of which weren't, and when he returned the documents, he sent them back to you mixed up in a big brown envelope without the file folders in them?

A. Yes.

Q. And then at some later date you took the documents out of the big brown envelope and put these documents back into the various files in your office?

A. That's right.

Q. Did you make up new file folders, then, for the—

A. Well, the ones—no. The ones that were out

[92]

and didn't have file folders, I made up new file folders for. The—my reason for knowing that that is correct is that—no—that's all right.

Q. Go ahead, tell me the reason.

A. I have seen some documents hooked together since that time that I don't believe should be hooked together. They were unrelated to the front sheet.

Q. In other words, by "hooked together," do you mean stapled together?

A. Yes.

Q. And how did they come to be stapled together?

A. I don't know. I didn't staple them.

Q. It was when you got them back you think they were stapled together?

A. Yes.

• • • • • • • •

Q. In other words, an attachment to a letter might not be—

A. Might not be the right attachment.

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[93]

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Q. In connection with the documents that came back to you from Mr. Hollander, did you deliver any of those documents to Mr. Winton or Mr. Medvane?

A. I could have shown them to him if it was in the right time frame, subsequent to getting them back from Hollander.

Q. Do you recall showing any of those documents that came back from Mr. Hollander to Mr. Winton or Mr. Medvane?

A. I showed Mr. Winton something. I can't remember now what I showed him.

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[97]

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Q. In your testimony earlier today concerning your conversation with Mr. Hollander, do you recall stating that Mr. Hollander mentioned some gaps in the files of Governor Lee concerning documents for petroleum supply in American Samoa?

A. He used the word "incomplete."

Q. That the files of Governor Lee were incomplete?

A. Yes.

Q. And when Mr. Hollander came to your office, did he just ask to see the documents that passed back and forth between you and Governor Lee, or did he ask you to see all your files on American Samoa?

A. All the files.

[98]

Q. How did he phrase that? Did he ask to see all your documents concerning American Samoa?

A. Everything, yes.

Q. Involving petroleum products, that is?

A. Yes.

• • • • • • • •

Q. • • • In connection with Mr. Hollander's visit to you in October of 1969, did you obtain any documents from Mr. McCook so that you could

[99]

deliver those documents to Mr. Hollander?

A. Not unless I had them already in the file. Not specifically did I call Mr. McCook that I remember, in which I said, "Mr. Hollander wants the whole documents. Do you have any documents?"

Q. You didn't ask Mr. McCook—

A. Not that I remember.

Q. —to provide any documents for Mr. Hollander?

A. No, I don't think so.

Q. Did you collect any documents from any place for Mr. Hollander other than the documents in your file?

A. No, I did not.

• • • • • • • •

Q. At the time of Mr. Hollander's visit to you in October of 1969, were you discussing with Mr. McCook the possibility of bringing the lawsuit against Standard?

A. I think we discussed it, yes.

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[100]

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Q. Do you recall the labels on the file folders that you delivered to Mr. Hollander in 1969?

A. No. They were varied.

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Q. Under what labels had you filed documents concerning petroleum supply in American Samoa?

A. As I say, it was varied and depended—depended on whether it was all about oil, which I tried to keep in one file, or whether it was under—there might be a paragraph in a letter which concerned dredging or some other operation down there. It might have a little

[101]

description in it.

Q. Did you have a dredging file?

A. Yes.

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Q. Did you in providing the documents to Mr. Hollander pull documents from other files and put them on the table for him?

A. Yes.

• • • • • • • •

[102]

Q. The documents that were loose were documents you had obtained from other files?

A. Yes, but germane to petroleum products.

Q. Did you tell Mr. Hollander you were giving to him all the documents that were in your files relating to petroleum products in American Samoa?

A. To the—yes.

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[114]

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Q. In other words, any documents you brought to Mr. Winton were strictly in your own files?

A. That's right. Now, those files from me could have included Mr. McCook's; you understand—his proposal to the Governor.

Q. His proposal to Governor Lee in 1965?

A. Yes.

Q. Is that what you are referring to?

A. I would have had copies of that kind of material.

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[120]

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Q. Do you recall getting back at least one big envelope from Mr. Hollander?

A. Yes.

Q. And one small envelope from Mr. Hollander?

A. One smaller.

Q. Do you recall getting back the big envelope from Mr. Hollander shortly after you met with him in October of 1969?

A. Shortly—I don't know.

Q. Well, within a period of months?

A. Yes.

Q. And do you recall getting back the small envelope from Mr. Hollander at some—

A. Later date.

Q. —later date after you got back the big envelope?

A. Yes.

Q. Do you recall getting back the small envelope from Mr. Hollander several months after you got back the big envelope, or was it more than several months?

A. No, it wasn't several months.

Q. Was it closer than several months?

A. Yes.

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[121]

A. When he took all of the material, he says, "I am going to look through this file, and I am only going to take out what I want to take out of it." So he took it. Now, I get a package of stuff back to the office. So I stuff it in the file, and then my recollection is faintly that I got another one, but I was busy at the time, and I remember seeing something from the Justice Department. I stuffed that, too, as the balance of the papers.

Q. And the second envelope was the smaller envelope?

A. It seemed to be smaller, yes.

Q. And then a couple of years later you got back the envelope or an envelope with the Tu documents in it, Tu 1 to 100, which is referred to here; is that—

A. Yes.

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[125]

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Q. • • • In the time sequence of your visit with Mr. Winton and Mr. Medvane, did you take to them any documents that you did not give to Mr. Hollander?

A. No.

Q. Was anything that they saw also seen by Mr. Hollander?

A. Yes.

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[127]

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Q. Were there any specific file folders that you recall putting any of these documents into that you got back from Mr. Hollander?

A. No, because I had about 10 or 12 files with different headings on them. I don't remember anything specific.

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[128]

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Q. Did Mr. Lynn at any time tell you that he was contacting the Sullivan firm in San Diego concerning a possible lawsuit against Standard?

A. Yes.

Q. Were you aware that Mr. Lynn had had a meeting

[129]

with the Sullivan firm in San Diego?

A. I believe I was.

Q. At any time, Mr. Turnbull, did you send documents to the Sullivan firm in San Diego?

A. I don't know whether I sent any directly to them, but I believe Lynn had given some documents that Lynn wanted to give to Mr. Lyle.

Q. You mean Mr. Jones?

A. Yes, Lyle Jones, because he had to have some documentation to place his thoughts on.

• • • • • • • •

Q. I take it at some point though you did have a discussion with Mr. Lynn concerning a possible suit against Standard?

A. Yes.

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[130]

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MR. KLITGAARD: Q. Do you recall providing documents from your files to Mr. Lynn to review?

A. Yes.

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[131]

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Q. In providing documents to Mr. Lynn or to Mr. Jones at any time, did you give them copies of documents and retain the originals in your files?

A. Everything—yes. My belief was that everything that went out was not an original. It was copies.

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[135]

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Q. • • • Did you send to Mr. Jones the entire packet of—

A. No.

Q. —documents that you made available to Mr. Hollander?

A. No.

Q. Did you go through your files and pull out specific documents for Mr. Jones?

A. Whatever they asked for, which would have been a verbal request from him to me.

Q. And was his request to you in terms of specific documents?

A. I think that to be true, yes.

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[136]

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Q. At any time did you collect documents from Mr. McCook and send those documents to Mr. Jones?

A. When you say did I collect them, you are talking about a time frame. I had a copy—I had a copy of his proposal and copies of everything concerning Bill's offer to the government—things like that. He didn't have too much stuff, and I don't think that I ever said, "Give me a copy of everything you have got."

• • • • • • • •

Q. • • • [D]id Mr. McCook ever deliver to you documents out of his file that you hadn't seen before but that related to petroleum supply in American Samoa?

A. There was only one, only one that I hadn't seen that I remember.

Q. What was that?

A. And that was the last—the last letter from Governor Lee to Bill McCook.

Q. That would be a letter of November, 1965?

A. If that's the last letter.

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[139]

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Q. Do you recall the size of the file Mr. McCook had on American Samoa?

A. Well, the file, if I remember correctly, I saw

[140]

some file, but it appeared not to have very much in it. It wasn't a thick file.

Q. And did you look through the documents in that file?

A. Yes, I think I did, and I remember seeing his offer to—on his letterhead.

Q. Offer to Governor Lee?

A. Yes.

Q. Was he—

A. I don't remember seeing anything else.

Q. Did you see any document in that file that you had not seen before? I want you to have specifically in mind Document No. 247, which we just looked at.

A. There's one—there's one thing about this letter that looks familiar.

Q. Document 247?

A. 247, and that's the initial paragraph.

Q. What is that?

A. "Your lett r of October 5 reached us today, and it was apparently sent surface mail." Now, that sticks in my craw because I remember Bill having some—some letter in which he said I sent it air mail and it was stamped air mail, and it went by boat, and that—that's the only thing that brings it to my mind.

Q. Did you see a copy of that letter in Mr. McCook's file when you looked at the file?

A. Unless that's where I saw it, because as I say, the surface mail thing is the only thing that gives me a

[141]

recollection.

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[143]

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[144]

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Q. Did you supply to Mr. Jones any documents that you did not provide to Mr. Hollander?

A. No, no.

Q. Did you provide to Mr. Lynn any documents that you did not provide to Mr. Hollander?

A. No.

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[145]

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Q. In October, 1970, we had a deposition here in Los Angeles in the government case in which you were deposed.

[146]

A. Yes.

Q. The date was October 1, 1970. Do you have that deposition generally in mind?

A. Yes, generally, yes.

Q. And you remember that Mr. Lynn was here at the deposition?

A. He was sitting alongside of me.

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[147]

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Q. Before you went to your deposition on October 1st, 1970, had you made a search of your files to see if you had

any documents in those files in addition to the documents that you had delivered to Mr. Hollander?

A. Yes.

[148]

Q. And did you find any additional documents?

A. I don't think I did at the time.

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[156]

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Q. Did you provide a file or files to Mr. Lynn for

[157]

him to look through?

A. Yes.

Q. And where did you provide these files to [him]?

A. As I say, it could have been in his office when I came down with some things under my arm or McCook's office or at breakfast in Newport.

Q. Did you bring down all your files?

A. No, I didn't.

Q. Just some of them?

A. Yes.

Q. And how did yon know what files to bring down to Mr. Lynn?

A. Well, contracts, Unoco thing, a hodgepodge.

Q. Did Mr. Lynn ask you to bring all your files down involving petroleum products?

A. I suppose he did. I don't—I didn't selectively go through it. I grabbed some stuff that I had generally, you know, without having duplications and things like that. I had a file covering almost everything that I could take. I didn't carry voluminous volumes with me.

Q. Were there some documents that you didn't bring down to Mr. Lynn?

A. If I did, it would have been an oversight or the guts of the deal he saw.

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[158]

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Q. And was this before Mr. Lynn was talking to Mr. Jones?

A. It would have been prior, I believe.

Q. Do you recall how thick the file was that you brought down to Mr. Lynn?

A. Not in measurement.

Q. Was it as thick as the files that you made available to Mr. Hollander?

A. No.

Q. Was it say half the size of the files you made available to Mr. Hollander? We established six inches on—

A. No, no. It would have been, I'd say, an inch or inch and a half, something like that.

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[160]

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Q. • • • [Y]ou referred to a meeting in Mr. McCook's office. Do you have that meeting in mind?

A. I remember one meeting when we were up there. You see—go ahead.

Q. This was a meeting out at Firestone Boulevard?

A. Yes.

[161]

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Q. Did Mr. McCook have any files present at that meeting?

A. No, not at the meeting, but I think it was at that time I looked in his file, if I remember correctly.

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Q. And did you see anything in his files at that time that was different from the documents that you delivered to Mr. Hollander?

A. No, I just remember—I went over three or four documents in the file.

Q. Were these documents different than the documents you delivered to Mr. Hollander?

A. I don't think so. I don't—as I am going back to that letter again at which we talked about the mail that went by boat, which was catastrophic for us at the time.

Q. Referring to Document [247]?

A. Yes, I am referring to Document 247. That is the only memory of that letter which means I would have seen that document, I guess, because that stuck in my mind.

• • • • • • •

MR. KLITGAARD: Q. Do you want to take a look at that?

[162]

A. Yes.

Q. You see at the top of 247 "Tell Ray and file"?

A. "Tell Ray and file." Now, who did he tell to tell Ray?

Q. Did you have a copy of 247 in your files at any time?

A. No.

Q. Are you sure of that?

A. I'm sure. You'd have had it.

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[165]

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Q. If you look at Document No. 247, you will see in the first paragraph "Your letter of October 1965 reached us only today, as it was apparently sent surface mail."

A. I—I must have seen that, because I saw that. I saw something that said "surface mail."

Q. So our record is correct in stating your testimony now, Mr. Turnbull, is it your testimony that you recall seeing this document, namely 247, in Mr. McCook's file out in the office at Firestone Boulevard?

A. It would have had to be the time.

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[168]

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Q. After your deposition in October, 1970, did you

[169]

go back and look in your files to see if there were any more documents involving petroleum supply in American Samoa?

A. Apparently in my deposition Mr. Mussman had brought up the subject of—he had an uneasy feeling that there wasn't—he didn't have all the documents. Yes, I did.

Q. Did you go back and look in your files?

A. I sure did.

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[172]

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Q. Did you find any documents in those files which were different from the documents that you delivered to Mr. Hollander?

A. No, I didn't.

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[174]

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Q. And how long did it take you to look through your files?

A. Oh, maybe a couple of hours sorting things out.

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Q. In going through your files, did you look through all the folders in the cabinets?

A. I didn't look through all of them. I looked through everything that had to do—my understanding was—had to do with the oil situation.

Q. Petroleum supply?

A. Petroleum supply.

Q. Did these include the folders that contained

[175]

documents which related in part to petroleum supply and in part to something else?

A. Yes, like alluding to it in a short little sentence—that is, coming across the ocean to McGee.

Q. Where is a document like that filed in your files?

A. That would have to be say in a letter, some letter about something other than talking about me racing in the Grand Prix, and this kind of stuff.

Q. It would be a letter unrelated to any of your ventures in American Samoa?

A. Yes.

Q. Did you look back through the files that related to your various business interests in American Samoa, whether it was Pacific Coconut Processing or something else, to see—

A. Well, I looked in every file that I thought had anything that would allude to the oil business.

Q. And did you find any new or additional documents?

A. No.

• • • • • • • •

Q. After you went back in your files, about how soon after that was it that you told Mr. Lynn you hadn't found anything?

A. Well, I remember it became a cause celebre about

[176]

this whole thing, Mussman saying, "I think there is something missing."

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Q. And about how many file folders did you look through?

A. Oh, about 10 or 12.

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[202]

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Q. • • • [I]n April of 1971, did Mr. Lynn ask at that time if you had any further documents concerning petroleum supply in American Samoa?

A. This is after my deposition?

Q. Your deposition was in October, 1970. This is six months later.

A. It could have been. I don't remember the specific time frame he called.

Q. You see the statement [in telegram dated 4/16/71] "Lynn also advised that Turnbull turned over his entire file to you from which you extracted Documents No. Tu 1 to 100"? Do you see that statement?

A. I do.

Q. Was Mr. Lynn being accurate in that statement?

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A It is accurate. I took everything I had to give to Mr. Hollander, and he went through every bit of it and took what he wanted.

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[210]

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A. When Mr. Hollander came to my office, he said, "I want all you have," and I said it doesn't all apply to you. "That's okay, I will take it back to Washington, look through it and give you back the things and only take out what we need."

Q. And then—

A. So I got two sets or three sets of documents. I think the first batch was stuff he didn't use.

Q. And the second batch was Tu—

A. Then I got the Tu numbers.

Q. And was that in the second batch?

A. I think it was in the second batch.

Q. And then in going back through your files, did you take those Tu-numbered documents—

A. And compare them—

[211]

Q. Yes.

A. No.

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Q. I just want to ask why didn't you compare them?

A. Well, I was familiar reading the Tu numbers. If there had been anything different, I would have then pulled it out. I mean, if there was any similarity—I was looking for something new.

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[November 25, 1975]

[214]

RAYMOND C. TURNBULL,

having been previously duly sworn, was further examined and testified as follows:

EXAMINATION (Continued)

By Mr. Klitgaard:

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[215]

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Q. I am going to hand you a document marked DDX 155 at your deposition in October, 1970 • • •

• • • • • • • •

Have you seen this document before today?

A. Yes.

Q. Was this one of the documents that you delivered to Mr. Hollander?

A. Yes, I believe so.

Q. I will represent to you that this document is

[216]

not among documents Tu 1 to 100, and I will ask you, sir, if before your deposition in October, 1970, you made any further search of your files to determine if you had additional documents relating to petroleum supply in American Samoa.

A. Before the deposition?

Q. Yes.

A. I don't remember specifically that I did, but—I don't remember.

Q. Before your deposition in October, 1970, had you got back your files from Mr. Lynn, the files that you delivered to him?

A. I don't remember that either.

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[220]

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Q. I am going to hand you now, sir, a document that was marked 158 at your deposition on October 1, 1970, and

[221]

that is now marked SDX 151. Do you have that document in front of you?

A. Yes.

Q. Have you seen a copy of this document before today, sir?

A. Just a moment. I know the letter—I remember the letter.

• • • • • • • •

Q. Do you recall making a search for this document prior to your deposition on October 1, 1970?

A. No.

Q. Was this one of the documents that you delivered to Mr. Hollander the year before?

A. I don't remember whether I gave this to Mr. Hollander. I didn't look at the—I just pulled the files out for Mr. Hollander, and he took—he took everything that he wanted.

Q. He took everything that he wanted?

A. He took everything that I had. At the time I believe he took everything that I had.

Q. Did you ever find anything in your files at any

[222]

time from October, 1969 to date that you didn't give to Mr. Hollander?

A. Well, these things I brought to you yesterday, and I think I did.

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Q. Apart from the documents you produced yesterday and which were marked for identification at your deposition yesterday, have you seen any other documents that you didn't produce for Mr. Hollander?

MR. PALMIERI: If you know.

THE WITNESS: Well, I don't know whether I did or not.

MR. KLITGAARD: Q. I am going to hand you now, sir, a copy of Document No. 157, which is a letter dated May 29,

1964, from James McGee to you. It is marked DDX 157 at your deposition and marked SDX 152 in the present set of depositions. Do you have that document in front of you?

A. Yes.

Q. Do you recall bringing this document 157 to your deposition in October, 1970?

A. No.

[223]

Q. Do you recall in what file this document was maintained?

A. No.

Q. Did you have a special file for Union Oil Company?

A. No.

Q. Did you have a special file for Unoco?

A. No, I didn't.

Q. I will represent to you, sir, that this document was not among the documents numbered Tu 1 to 100, and I will ask you whether or not this was one of the documents that you produced for Mr. Hollander in October, 1969?

A. I would have no way of remembering.

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[225]

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Q. In going through the file cabinets [after disposition in October 1970] did you have the set of documents Tu 1 to 100 in front of you?

A. I don't specifically remember.

Q. Did you remember each and every document that you had delivered to Mr. Hollander in October of 19— —

A. No.

Q. — —69?

A. No, I didn't.

Q. How did you compare, sir? How did you determine whether there were any additional documents in your file that were different from the documents Tu 1 to 100?

A. I wouldn't—it wouldn't have been a slipshod way of going through, pulling something out that wasn't congregated in the files.

Q. I want to be sure you understand my question.

A. I understood it. How would I know if I didn't

[226]

compare with the Tu numbers.

Q. Yes, how would you?

A. Well, I was looking through other files that had other things in them. I wouldn't have compared it.

Q. Do you have any recollection at this time of having any documents numbered Tu 1 to 100 in your files on October 1?

A. I don't.

• • • • • • • •

A. I was just glancing through my files to see if I came up with something that appeared to be new.

Q. Mr. Turnbull, in the prior year, when you had delivered the documents to Mr. Hollander from your files when you delivered the folders, had you looked through each one of the documents in those folders before the time you delivered them to Mr. Hollander?

A. No.

Q. In going through your files after your deposition, the day after your deposition, how did you know whether you were seeing documents in addition to documents delivered to Mr. Hollander, or how did you know that you weren't seeing documents in addition to documents delivered to Mr. Hollander?

A. Well, I wasn't totally unfamiliar with the—

[227]

with my general file anyway on this thing, and it is easy enough to take a look at something I remember like what you threw out here to me.

Q. Looking at DDX 155?

A. Looking at things that were familiar. 376, and what is that—152 and 151. That wouldn't have been anything new to me.

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[234]

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Q. This is Document No. 558. Do you have that document in front of you?

A. Yes.

Q. And it shows a carbon copy to you; correct?

A. Yes.

Q. Do you see the statement in there • • • that the documents previously marked Tu 1 through 100 constitute the totality of the Turnbull file respecting the above matter?

[235]

A. Yes.

Q. Now, sir, as of January 13, 1971, did you have a set of documents Tu 1 to 100?

A. Yes.

Q. Did you go back through your files before the time that Mr. Lynn sent this letter to Mr. Mussman and check each document in your file against Tu 1 to 100 to see if there were additional documents in the files?

A. In addition to the Tu numbers?

Q. Yes.

A. I looked through the other files that were unrelated to the oil and gas business to find out whether there was

anything that could have been slipped in there, and there weren't any there.

Q. Did you look through the documents that Mr. Hollander returned to you to see if there were any other documents other than Tu 1 to 100?

A. I don't recollect looking through anything I had gotten back.

• • • • • • • •

[237]

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Q. Now, sir, is there any reason why you didn't look through the files you had gotten back from Mr. Hollander?

A. Because it would—because I believed at the time or would have believed at the time that all those documents were already a matter of record.

Q. Had already been given to Standard?

A. Had already been done. • • •

Q. In February, 1971, you received a letter from Mr. Lynn. I would like to hand you a copy of this letter, sir, which is Document No. 1199. Do you have that document in front of you?

A. Yes.

Q. I think you testified yesterday that the handwriting on this document is yours; is that right?

A. That's right.

Q. When was this handwriting put on this document, sir?

A. I don't know.

Q. Was it put on in the year 1971?

A. Yes, it would be, but I don't remember my reason for having put it on.

Q. You see that the letter is entitled "McCook— Standard Oil"?

[238]

A. Yes.

• • • • • • • •

Q. • • • [D]o you see the Paragraph 2 that says "Top billing"? • • •

Would you read that?

A. It is "Top billing. McCook—Standard Oil. A suit deals with services over a period of time made fruitless by Standard Oil lowering prices—restraint of trade."

Q. What do you mean by "Top billing," sir?

A. Well, whether there was any reason for—for us both to be in the suit.

• • • • • • • •

[240]

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Q. Do you see the Document 1199 is in those documents that you produced yesterday?

A. Yes.

Q. And did you obtain the documents that you produced yesterday from your files, or did you collect them from other files in addition to your files?

A. Must have been in my file.

• • • • • • • •

[242]

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Q. • • • Do you see the statement in the second paragraph, "Mr. Jones' inquiry respecting events occurring between Mr. McCook and Governor Lee during the week of August 25, 1965 are in need of exploration"? Do you see that?

A. Yes.

Q. Do you see your handwritten notes down at the bottom of the document?

A. Yes.

• • • • • • • •

Q. And seeing that, sir, is it your recollection

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that you put these handwritten notes on this document sometime in 1971?

A. Yes.

Q. And is it your recollection that you put these notes on the document sometime in 1971 within a month or so after you received Document 1199?

A. Yes.

• • • • • • • •

[246]

• • • • • • • •

Q. Sir, I am going to hand you a document numbered 246, which is a letter dated October 5, 1965 from Mr. McCook to Governor Lee. Do you have 246 in front of you?

A. Yes.

Q. Do you see that that letter is dated October 5, 1965?

A. Yes.

Q. Do you see at the bottom of the letter of February 19, 1971, there is a statement in the very last line "Lee-McCook, refer to Bill's letter of October 5, 19—"—

• • • • • • • •

A. Yes.

Q. Will you look at the document you are holding in your right hand, which is a letter dated October 5, 1965, which is No. 246?

[247]

A. Yes.

Q. In the blue handwritten notes at the bottom of 1199—

A. Yes.

Q. —are you referring to this Document 246 which is in your right hand?

A. Yes.

• • • • • • • •

Q. How did you know about the letter in your reference to it on Document 1199?

A. I don't remember. I would have had to have seen it, but I can't tell—I can't tell you whether it was in my file or not

• • • • • • • •

[248]

• • • • • • • •

Q. In any event, as of February or March, 1971, you knew about the October 5, 1965 letter from McCook to Lee, did you not?

A. February, 19— — yes.

Q. Is your answer "Yes"?

A. Yes.

[249]

Q. Now sir—

MR. PALMIERI: Depending on when he made these notes.

MR. KLITGAARD: Q. That's what I wanted to go back to.

A. Let's see. You mean at the time—did you say February 19th?

Q. No, I said—

A. Was I familiar with this?

Q. I said in February or March, 1971.

A. Well, at this time was I familiar with that?

Q. Yes.

A. Yes, sir. I wouldn't have written on it on the bottom.

Q. In other words, you were familiar with the October 5, 1965 letter?

A. I must have been, yes.

Q. Sometime in February or March, 1971?

A. Yes.

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[254]

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Q. Directing your attention now, sir, to Document

[255]

No. 425, which is a telegram dated April 23, 1971, from Mr. Lynn to Mr. Mussman, do you have this document in front of you, sir?

A. Yes.

• • • • • • • •

Q. In April, 1971, did Mr. Lynn ask you to go back through your files and make a search for any documents in addition to Tu 1 to 100?

A. Yes.

Q. What did Mr. Lynn ask you to do, sir?

A. To see if I had any other documents in connection with the case or petroleum products.

Q. At this time, sir, did you have in your documents a set of documents Tu 1 to 100?

A. Yes.

• • • • • • • •

[256]

• • • • • • • •

Q. By let's say the 1st of April, 1971, had you received back from Mr. Hollander the documents which you had given to him?

A. Yes.

Q. And you received those back in two envelopes; correct?

A. Different times, yes.

Q. One big envelope and one thin envelope?

A. One larger than the other, yes.

• • • • • • • •

[257]

• • • • • • • •

Q. • • • [W]hen you went back into your files before April 23, 1971, did you compare the documents in your files with set Tu 1 to 100?

A. No.

Q. Did you look in the files that the government had returned to you to see if there were any documents in your files in addition to Tu 1 to 100?

A. No, I did not.

Q. What files did you look in to see if there were documents in addition—

A. All the other files that were unrelated to oil and gas. I just went through every one of them looking for anything that would tie in, because what I had had originally had already been turned in. I was looking for new things that Mr. Mussman couldn't find or wanted.

[258]

Q. Is it your testimony that you did not go back through the documents that the government returned to you to see if there were in those documents—

A. I don't remember having gone through those documents because I thought those were in evidence.

• • • • • • • •

[260]

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Q. From whom did you receive that set of documents numbered Tu 1 to 100?

A. From Mr. Hollander.

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[261]

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Q. If you will look at the first line of Document 425, you will see the statement that "Please be advised that Messrs. Turnbull and McCook's files examined week ending 4-17-71." Do you see the statement?

A. Yes.

Q. Did Mr. Lynn personally come to your office at any time before April 23, 1971 and make a search of your files, Mr. Turnbull?

[262]

A. Mr. Lynn—my recollection is that Mr. Lynn never actually went through my files. • • •

• • • • • • • •

[263]

Q. In searching the files in your office in response to Mr. Lynn's request, that is before this April 23, 1971 telegram, did you discover any new documents relating to petroleum supply in American Samoa?

A. I can't remember having found any.

• • • • • • • •

[273]

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Q. Now that we have talked a while about the February 16, 1972 letter, do you recall receiving in a separate packet or folder the documents that Mr. Lynn refers to in this letter 537?

A. Yes.

Q. How thick was that packet, sir?

A. I can't tell you.

Q. Was it a foot thick?

A. Oh, no.

Q. Was it an inch thick?

A. Not even that.

Q. Less than an inch thick?

A. Yes.

• • • • • • • •

[294]

• • • • • • • •

Q. Mr. Turnbull, do you have the letter in front of you dated July 20, 1973 from Mr. Hollander, and do you recall receiving Documents Tu 1 to 100 with that letter?

A. Yes.

• • • • • • • •

[295]

• • • • • • • •

Q. [D]id you go back into your files after receiving this letter to see if you had any documents in addition to Tu 1 to 100 which were returned to you by Mr. Hollander in 1973?

A. Yes.

• • • • • • • •

[296]

• • • • • • • •

Q. Was it within a month or two after you got the July [20th] letter from Mr. Hollander?

A. Yes, that's reasonable.

Q. And at whose request did you go back into your files?

A. Mr. McCook.

• • • • • • • •

Q. And in going back through your files at the request of Mr. McCook, what did you do?

A. Well, I went through all the—I went through my files looking for everything I had in connection with it.

Q. Did you go through all four file drawers?

A. Yes.

• • • • • • • •

[297]

• • • • • • • •

Q. Were the petroleum documents in American Samoa kept in one general file cabinet?

A. Yes, one four-drawer.

Q. And were they kept in any particular drawers in that four-drawer file cabinet?

A. No, they were commingled with other things.

Q. In that four-drawer file cabinet?

A. Yes.

Q. From the beginning, from the time that you talked to Mr. Hollander in 1969, had your files involving petroleum supply in American Samoa been kept in one four-drawer file cabinet, the cabinet you just described?

A. Yes. They had all been kept in one file.

Q. One file cabinet?

A. One file cabinet.

Q. Then when Mr. McCook asked you to go back through your files to look for documents involving petroleum

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products, did you limit your search to the four-drawer file cabinet?

A. Yes.

Q. To one four-drawer file cabinet?

A. Yes.

Q. At that time did you pull out for Mr. McCook all the documents that you had in that particular four-drawer file cabinet relating to American Samoa?

A. I compiled everything that I could find that Mr. McCook asked me to find, asked me to look for. I compiled everything and stacked them up on the desk.

Q. Did you look in the folders of the documents that had been returned to you by Mr. Hollander?

A. Yes.

Q. Do you recall your prior testimony that in the other searches you would look in separate files, not the ones returned to you by Mr. Hollander, but in separate files to see if additional documents were returned to you?

A. Yes, I looked in unrelated—like the dredging and things like that.

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[301]

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Q. In your search for McCook did you look through files that did not relate to petroleum products in American Samoa?

A. No.

• • • • • • • •

[302]

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Q. In other words, is it fair to say that you went back through your four-drawer file cabinet and picked out everything you could find relating to petroleum in Samoa?

A. Yes.

Q. And you did that without regard to whether particular documents you delivered to Hollander or got back from Hollander or got back from Lynn or ones you got from anyone else?

A. Yes.

[303]

Q. And in the documents that related that you brought to McCook—

A. He asked me to take them down there, take them down and give them to—give to somebody by the name of Roger.

Q. Roger Nichols? Was Nichols an attorney with the firm of Kindel & Anderson?

A. Yes.

• • • • • • • •

Q. At any time did you deliver documents from your files to anyone other than Mr. Nichols at Kindel & Anderson?

A. No.

• • • • • • • •

[345]

• • • • • • • •

Q. Do you recall any discussion at all up until today with any lawyer from Kindel & Anderson concerning either the request by Mr. Hollander to you for documents or your turning over documents to Mr. Hollander or Mr. Hollander returning documents to you?

A. Yes, in the recital of the story from the beginning to the end about from the time Hollander contacted me—he said, "I want your file." I discussed all of that with these gentlemen.

Q. With whom?

A. With both Mr. Kane and Mr. Palmieri.

• • • • • • • •

Q. What did you tell them to the best of your

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recollection concerning the turning over of documents in the government case to Mr. Hollander?

A. Well, I recited the story of him having called me, having come in and picked up the documents and taken them back to evaluate in Washington.

Q. I want you to tell me to the best of your recollection what you told Mr. Kane or Mr. Palmieri concerning the

turning over of documents in the government case to Mr. Hollander.

A. Well, initially, when I got together with him, I said Mr. Hollander had requested my complete file and said that Governor Lee's file is incomplete and they would like to have my file, and so Mr. Hollander asked for an appointment, and Mr. Hollander came to my office and asked for my file. I opened the file drawers and took the file—no, I had already taken the stuff out, knowing that he was coming for that appointment, had it stacked up on the desk, and he took it all and put it into his briefcase or whatever he had, satchel, whatever he had, and said, "I will return all of these to you."

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[351]

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Q. I am going to show you now, Mr. Turnbull, the documents that Mr. McCook has produced in the present case, • • • the documents actually produced, not photocopies of them • • •

[352]

• • • • • • • •

Q. I am going to hand you Document 93 through 96. Do you have this document in front of you?

A. Yes.

• • • • • • • •

[353]

• • • • • • • •

Q. Is this one of the documents that was in your files at your office on Wilshire Boulevard?

A. Yes.

Q. Is this one of the documents that you delivered to Mr. Hollander?

A. I believe so.

• • • • • • • •

[355]

• • • • • • • •

Q. Was Document 93—

A. Same.

Q. —through 96 in your office at the time Mr. Hollander was there to pick up the documents?

A. Yes.

Q. And was it among the documents you turned over to Mr. Hollander?

A. I don't know. I am saying everything was back there for him to take, so it would be an assumption on my part that he took them.

Q. In stacking up the documents for Mr. Hollander, did you stack up everything in your files relating to petroleum supplies in American Samoa?

A. Everything was stacked up, everything in my file relating to—

Q. And you recall your testimony earlier that the pile was more than six inches high?

[356]

A. Yes, sir.

• • • • • • • •

Q. Looking at Document No. 101, do you have this document in front of you?

A. Yes.

• • • • • • • •

Q. Is this one of the documents that was in your files in October, 1969 when Mr. Hollander came to your office?

A. I'd say yes.

Q. And was this among the documents that you turned over to Mr. Hollander?

A. I don't know whether it was or not.

Q. Do you know if this document was excluded from the documents that were turned over?

A. This was part of my main file, and everything would have been available to Mr. Hollander.

Q. In other words, you have no recollection of this being excluded from Mr. Hollander?

A. No, it wasn't excluded.

Q. Turning now to Document 102, which is a copy of Document 101—

[357]

A. Same thing.

• • • • • • • •

Q. Was this among the documents in your files at the Wilshire Boulevard address in 1969?

A. Yes.

Q. And was this document among the files that you turned over to Mr. Hollander?

• • • • • • • •

A. It would have been available and on the table. Whether he took them or not I don't know.

Q. Was this document excluded from the files that you turned over to Mr. Hollander?

A. It would have been at his exclusion and not mine. Everything was available to him.

Q. Is Document No. 103 in front of you?

A. Yes.

• • • • • • • •

Q. Is this one of the documents you turned over to Kindel & Anderson?

A. Yes.

Q. Is this one of the documents in your files in October, 1969?

A. Yes.

[358]

Q. Is this one of the documents you turned over to Mr. Hollander?

A. They were available for him.

Q. And is this one—

A. Whether he took them or not, I don't know.

Q. Did he take everything on your desk?

A. I don't remember at this time.

Q. Did he look through some files on your desk and leave some documents there?

A. I can't answer that. I don't remember. I don't remember.

• • • • • • • •

Q. Did he make any selection of documents?

A. No, it wasn't a long-term, laborious treatment. My recollection was it was a very kind of hurried sweep, and he picked up everything he wanted, but how would he know, unless he took an hour?

• • • • • • • •

Q. When Mr. Hollander was at your office, did he exclude this document from the files?

A. I don't remember any specific exclusion or

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acceptance of the documents by him.

Q. You don't remember him accepting the documents from those—

A. I don't remember.

MR. PALMIERI: You mean specific documents?

MR. KLITGAARD: Q. Yes. What I am asking you is, when Mr. Hollander was in the office, if he made a selection of documents to take. I would assume he would have to look at the documents to select the ones to take.

A. That is what I am telling you, I don't remember a great passage of time in the selection of the papers that he took.

• • • • • • • •

[360]

• • • • • • • •

Q. I am going to hand you a copy of Document No. 105-106. Have you seen this document in front of you?

A. Yes.

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[361]

• • • • • • • •

Q. Is this one of the documents that was in your files in October, 1969?

A. Yes.

Q. Is it one of the documents you made available to Mr. Hollander?

A. It would have been put out with the rest of them. I don't know whether he took them or not.

• • • • • • • •

[362]

• • • • • • • •

Q. • • • Was your correspondence with Governor Lee in a separate file in your file drawers, separate drawer?

A. I don't remember.

• • • • • • • •

[367]

• • • • • • • •

Q. I would like to hand you Document No. 115. Do you have this document in front of you?

A. Yes.

• • • • • • • •

Q. Was this one of the documents that was in your file in October, 1969?

A. Yes.

Q. And is it one of the documents you made available to Mr. Hollander?

[368]

A. Yes.

• • • • • • • •

[381]

• • • • • • • •

Q. * * * I would like to hand you Document 135. Do you have this document in front of you?

A. Yes.

• • • • • • • •

[382]

• • • • • • • •

Q. Is it one of the documents that was in your files in October, 1969?

A. Yes.

Q. Is it one of the documents you made available to Mr. Hollander?

A. Yes.

• • • • • • • •

Q. Was installing a dock part of your plan for entering American Samoa?

A. It was planned, yes.

Q. Was your answer "Yes"?

A. Yes.

Q. Did you have any written correspondence with Mr. Schmuck at Dillingham?

A. Yes.

[383]

Q. I believe in the documents you produced yesterday there is one letter to Schmuck—

A. About dredging.

Q. Is there more than one letter to Mr. Schmuck?

A. Yes.

Q. And is there more than one letter involving petroleum products?

A. No.

• • • • • • • •

[385]

• • • • • • • •

Q. Did the dredging fall in line with your plan to supply petroleum products?

A. Only inadvertently, because we were talking about dredging, about opening up that lagoon near the airport.

• • •

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[386]

Q. I am going to hand you Document 138. Do you have that document in front of you?

A. Yes.

• • • • • • • •

Q. Is it one of the documents that were in your files in October, 1969?

A. Yes.

Q. Is it one of the documents you made available to Mr. Hollander?

A. Yes.

Q. I would like to hand you Document 139. Do you have that document in front of you?

A. Yes.

• • • • • • • •

Q. Is that one of the documents that was in your files in October, 1969?

A. Yes.

Q. Is it one of the documents you made available to Mr. Hollander?

A. Yes.

• • • • • • • •

[398]

• • • • • • • •

Q. I hand you Document 159 and ask if you have this document in front of you?

A. Yes.

Q. There is some handwriting in the middle—

A. That's mine. It says "835 Fletcher." That was the price of oil from Fletcher.

• • • • • • • •

Q. And is this one of the documents you had in your files in October, 1969?

A. Yes.

Q. Is it one of the documents you made available to Mr. Hollander?

A. I believe it was.

• • • • • • • •

[403]

• • • • • • • •

Q. I would like to hand you Document No. 165. Do you have Document 165 in front of you?

A. Yes.

• • • • • • • •

Q. Was it one of the documents in your file in October, 1969?

A. Yes.

[404]

Q. Was it one of the documents that you made available to Mr. Hollander?

A. I believe it was.

Q. You will see some handwriting on this document.

A. That is my secretary's. This is mine.

• • • • • • • •

Q. Everything except "Walker Shell Melbourne" is your handwriting?

A. Yes.

• • • • • • • •

[408]

• • • • • • • •

Q. I hand you Document 171. Have you seen this document before, sir?

A. Yes.

Q. Is this a letter from you to Mr. Shaw?

A. Yes.

• • • • • • • •

Q. Is it one of the documents that was in your file in October, 1969?

[409]

A. Yes.

Q. Is it one of the documents that you made available to Mr. Hollander?

A. I'm not sure.

• • • • • • • •

Q. Do you recall keeping this correspondence in your petroleum file?

A. Yes.

Q. Was your petroleum file one of the files you made available to Mr. Hollander?

A. Yes.

• • • • • • • •

[413]

• • • • • • • •

Q. I am handing you 176. Do you have this in front of you?

A. Yes.

• • • • • • • •

Q. Is it one of the documents that was in your file in October, 1969?

A. Yes.

Q. Was it one of the documents you made available to Mr. Hollander?

A. Yes. I said that specifically, because he wanted everything connected with any correspondence between me and him.

Q. In going through your file, did you try to search out for any correspondence between Governor Lee and yourself?

A. He had a great interest in my correspondence I had with Governor Lee.

Q. You did go through and search out—

A. Yes.

• • • • • • • •

[414]

• • • • • • • •

Q. I would like to hand you Document No. 177. Do you have this document in front of you?

A. Yes.

• • • • • • • •

[415]

• • • • • • • •

Q. You see it refers to Chicago Bridge and Iron. Is this one of the documents that was in your file in October, 1969?

A. Yes.

Q. Is it one of the documents you made available to Mr. Hollander?

A. Yes.

Q. Whose handwriting is this down in the lower left-hand side?

A. That's mine.

• • • • • • • •

Q. Did the handwriting have to do with supplying petroleum products to American Samoa?

A. Yes.• • •

• • • • • • • •

[416]

• • • • • • • •

Q. I would like to hand you Document 179. Do you have this document in front of you?

A. Yes.

• • • • • • • •

Q. Is it one of the documents that was in your files in October, 1969?

A. Yes.

Q. Is it one of the documents you made available to Mr. Hollander?

A. I don't recall whether I did.

• • • • • • • •

[418]

Q. I would like to hand you Document No. 181. Do you have that document in front of you?

A. Yes.

• • • • • • • •

Q. Is it one of the documents that was in your file in October, 1969?

A. Yes.

• • • • • • • •

Q. And is this one of the documents you made available to Mr. Hollander?

A. I don't know whether it is or not.

• • • • • • • •

Q. I would like to hand you Document 182. Do you have that document in front of you?

A. Yes.

• • • • • • • •

Q. Was this one of the documents that was in your

[419]

file in October, 1969?

A. Yes.

Q. Was it one of the documents you made available to Mr. Hollander?

A. Yes.

• • • • • • • •

[420]

• • • • • • • •

Q. I would like to hand you Document No. 188. Do you have this in front of you?

A. Yes.

• • • • • • • •

Q. Is it one of the documents that was in your files in October, 1969?

A. Yes.

Q. Is it one of the documents that you made available to Mr. Hollander?

[421]

A. Yes.

• • • • • • • •

[423]

• • • • • • • •

Q. I would like to hand you Document No. 192-194, and I will ask you, have you seen this document before?

A. Yes.

Q. Is this a letter from Mr. Johrde concerning the petroleum storage tanks in American Samoa?

A. Yes.

• • • • • • • •

Q. Was it one of the documents you had in your files in October, 1969?

A. Yes.

Q. Was it one of the documents you made available to Mr. Hollander?

A. I don't know whether it was made available to him or not. I did not exclude him. I did not exclude it.

Q. From the files you delivered to him?

A. Yes.

Q. Did you have a file in your office in 1969 that was entitled "Chicago Bridge and Iron" or "Petroleum Storage Tanks"?

A. I think I did under "Storage Tanks."

Q. And in pulling documents for Mr. Hollander, did you pull the "Storage Tank" file for him?

A. That is the thing I don't remember, because at the time it could have been not connected other than the

[424]

tanks, which in my mind might not have been important to him.

Q. Do you recall whether or not you pulled that file for him?

A. I don't remember.

• • • • • • • •

[429]

• • • • • • • •

Q. I would like to show you Document 216 and 217 and ask you, do you have this document in front of you?

A. Yes.

• • • • • • • •

Q. 216 and 217 is one of the documents that was in your file in October, 1969?

A. Yes.

Q. Was it one of the documents you made available to Mr. Hollander?

A. Yes.

• • • • • • • •

[434]

• • • • • • • •

Q. I would like to go out of order for just a minute and hand you Document 325. Do you have that?

A. Yes.

• • • • • • • •

[435]

• • • • • • • •

Q. Was it one of the documents that was in your file in October, 1969?

A. Yes.

Q. Was it one of the documents you made available to Mr. Hollander?

A. Yes.

• • • • • • • •

[439]

• • • • • • • •

Q. I hand you a Document 224. Do you have this document in front of you?

A. Yes.

• • • • • • • •

Q. Is that one of the documents that you had in

[440]

your file in October, 1969?

A. Yes.

Q. Is that one of the documents you made available to Mr. Hollander?

A. I'm not sure.

• • • • • • • •

Q. I would like to hand you Document 225. Do you have this document in front of you?

A. Yes.

Q. 225 is a copy of 224. Do you see that?

A. Yes.

• • • • • • • •

Q. And did you get 225 from a different part of your file than you got 224?

A. I don't remember.

Q. Was 225 one of the documents in your file in October, 1969?

A. Yes.

Q. Was it one of the documents you made available to Mr. Hollander?

A. Yes.

Q. I would like to hand you Document 226. Do you have this document in front of you?

A. Yes.

[441]

• • • • • • • •

Q. Is it one of the documents that you had in your file in October, 1969?

A. Yes.

Q. Is it one of the documents you made available to Mr. Hollander?

A. I'm not sure.

• • • • • • • •

Q. I hand you Document No. 227, • • • Do you have 227 in front of you?

A. Yes.

Q. Is this one of the documents you delivered to Kindel & Anderson?

A. Yes.

Q. Which is a letter addressed to you from Mr. Shaw?

A. Yes.

Q. Was it one of the documents you had in your file in October, 1969?

A. Yes.

Q. Was it one of the documents you made available to Mr. Hollander?

A. I'm not sure.

• • • • • • • •

[442]

• • • • • • • •

Q. Why aren't you sure that you delivered this document to Mr. Hollander?

A. Well, I'm just not sure whether it came out of the folder.

Q. Is there any reason why you are not sure?

A. No, there isn't any reason why I would not have.

• • • • • • • •

A. • • • It wasn't held back for any reason.

• • • • • • • •

[446]

• • • • • • • •

Q. In collecting documents for Mr. McCook, did you check the same files that you looked in for Mr. Mussman?

A. Yes.

Q. Did you look through any additional files for Mr. McCook?

A. Not that I know of.

[447]

• • • • • • • •

Q. This document [228] was in your files in October, 1969?

A. Yes.

Q. And is it one of the documents that you made available to Mr. Hollander?

A. Yes.

• • • • • • • •

[448]

• • • • • • • •

Q. I would like to direct your attention to Document 229. Do you have this document in front of you?

A. Yes.

• • • • • • • •

[449]

• • • • • • • •

Q. Is it one of the documents that was in your file in October, 1969?

A. Yes.

Q. Was it one of the documents that you made available to Mr. Hollander?

A. Yes.

• • • • • • • •

[453]

• • • • • • • •

Q. In checking your files for petroleum products in October of 1969, did you go through those files and pull out any documents that you withheld from Mr. Hollander?

A. That I withheld?

Q. Yes.

A. I don't remember. Mr. Hollander, as far as I remember, Mr. Hollander had access to everything I had. Now,

if I excluded anything, it wouldn't have been by design. It would have been oversight on my part pulling it out. That is—

• • • • • • • •

Q. You collected the files; do you recall that?

A. Yes, I collected them.

[454]

Q. You put them on your desk. Before Mr. Hollander got to your office, did you go through the files and pull any documents out of them?

A. No.

• • • • • • • •

Q. I would like to hand you Document 237 and 238. Do you have this document in front of you?

A. Yes.

[455]

Q. Have you seen this document before today?

A. Yes.

• • • • • • • •

Q. Is it one of the documents that you had in your file in October, 1969?

A. Yes.

Q. Was it one of the documents you made available to Mr. Hollander?

A. I am not certain I did, but I would not have kept it from him. It would have been—he went through and passed over it.

Q. Passed over by him?

A. Yes.

Q. Was this Document 237 prepared by you initially?

A. Yes.

Q. I would like to hand you Document 238. Did you type it up initially?

A. Yes.

• • • • • • • •

Q. At the top we have a handwritten note that says "Drafted McCook proposal by Turnbull."

A. That's my handwriting.

• • • • • • • •

[456]

• • • • • • • •

This was a draft of a letter carrying certain pertinent information here, and the draft—I drew the draft. It went to McCook, and you will see all these other X-outs and deletions and changes in this thing—they were done by McCook.

• • • • • • • •

[461]

• • • • • • • •

Q. I hand you Document 239-240. Do you have this document in front of you?

A. Yes

• • • • • • • •

Q. Was it one of the documents in your files in October, 1969?

A. Yes.

Q. Was it one of the documents you made available to Mr. Hollander?

A. I'm not sure. I would not have excluded him

[462]

from it. He was not excluded from it, but I can't tell you whether I—

Q. Do you recall whether you excluded it from Mr. Hollander?

A. —did I not deliver it to him?

Q. [I]n going through your files, in collecting the documents for him, did you exclude this particular document?

A. No.

• • • • • • • •

[465]

• • • • • • • •

Q. I would like to hand you Document 243. Do you have Document 243 in front of you?

A. Yes.

• • • • • • • •

[466]

• • • • • • • •

Q. Where did you get this Document 243?

A. I don't know where it came from unless it came from the dredging file, I guess. There isn't anything there about oil. It is just a straight dredging—

Q. In collecting documents for Kindel & Anderson, did you look through your dredging file?

A. I guess I did. I don't remember pulling that.

Q. Was this one of the documents you delivered to Kindel & Anderson?

A. Yes.

Q. Was it one of the documents you had in your files in October, 1969?

A. Yes.

Q. Was this one of the documents that you made available to Mr. Hollander?

A. Yes.

• • • • • • • •

[467]

• • • • • • • •

Q. • • • Did your plan for dredging of the Nu'uuli Lagoon include the eventual installation of storage tanks at that location?

A. The possibility of it. • • •

Q. Was the dredging of Nu'uuli Lagoon for use for tankers to bring in oil products to American Samoa one of the subjects you discussed from time to time with Governor Lee?

A. It was the place to refuel the fishing boats if it turned out that way, but to put—bring in there, and they could lay offshore and put into the tanks.

Q. The petroleum storage tanks?

A. Yes.

Q. And was that a subject you discussed with Governor Lee from time to time?

A. That's right, yes.

• • • • • • • •

[471]

Q. I would like to direct your attention back, sir, to Document 246. Do you have this document in front of you?

A. Yes.

• • • • • • • •

Q. Directing your attention now, sir, to the letter dated February 19, 1971 to you from Mr. Lynn on which you refer at the bottom in your handwritten notation to Bill's letter of October 5, 1965, do you see that?

A. Yes.

Q. Lee refers to Bill's letter of October 5, 1965.

A. Yes.

Q. "Still interested." Is this letter here, 246, the letter that you are referring to when you made this notation on Document 1199?

A. Yes.

Q. Was Document 246 among the documents in your

[472]

file in October, 1969?

A. Yes.

Q. And was it among the documents that you made available to Mr. Hollander?

A. I'm not sure.

• • • • • • • •

Q. You see the document is addressed to Governor H. Rex Lee?

A. Yes.

Q. Did you have any copies of Document 246 in your files?

A. Not that I remember.

• • • • • • • •

[473]

• • • • • • • •

Q. Without regard to whether this particular Document 246 was in your files in October, 1969, did you have some copy of the October 5, 1965 letter from McCook to Lee in your files?

A. Would you repeat that? Just the last question.

MR. KLITGAARD: Read it back, please.

(The pending question was read by the reporter.)

• • • • • • • •

A. • • • Do you mind me making a statement on this thing?

Q. Referring to the writing?

A. I am referring to Bill's letter of October 5.

Q. That is the same letter we have marked—

A. That is the same letter, I will admit. Where I got this letter is the only thing I am questioning on, is where I got that letter, whether I got it from Bill McCook, whether I got it from Lynn, whether I had it in my file, I don't know.

• • • • • • • •

[477]

• • • • • • • •

Q. Is this [246] one of the documents you turned over to Kindel & Anderson?

A. I'm going to say yes, because I could have. That's all. I can't say I didn't. I am familiar with this thing because I had already referred to it in something else, so I had seen it.

• • • • • • • •

A. That's what I'm telling you. I had seen the document. Outside of that, I became aware of it because I am referring to it in my own handwriting on the back of the letter.

Q. Let's take the simple part first.

A. I don't know whether Lynn had it or—

Q. Let's go back to the very beginning. In February of 1971 you referred to a letter dated October 5, 1965?

A. I don't know whether I did or not. This is the February 9 letter, and this comes up here in which I am referring back to a letter dated October 5.

[478]

Q. • • • Will you look at Document 1199?

A. Yes.

Q. Down at the bottom there are a number of lines written in in your handwriting?

A. That's right.

Q. Among those lines do you see the last line that refers to Bill's letter of October 5?

A. Yes.

Q. It was your earlier testimony that you put that handwriting on here sometime in February or March of 1971.

A. I don't remember testifying about the date I put it on. I said this was a request Jones had to have some other further thing on it. I told you I didn't know when I put it on.

Q. Well, you put it on after you received the letter, did you not?

A. I put it on after '71.

Q. You mean after February of 1971?

A. Now, when I put it on afterwards, I can't tell you.

Q. More than a year?

A. I can't tell you when.

• • • • • • • •

[481]

• • • • • • • •

A. All right, say it again? What was the time period?

Q. In February or March—

A. February or March. Yes, I will have to change it, because I had no way of measuring it.

Q. Coming forward, did you put your handwriting on the bottom of 1199 in connection with your collection of documents for Kindel & Anderson in the present McCook Case?

A. I'm going to have to beg off on tying it down.

Q. Let me ask in a broad, general way. Do you recall putting this handwriting in blue on the bottom of 1199 in connection with the preparation of the present McCook case, • • • as opposed to some prior time in 1971?

A. No. I wouldn't have done this after the setting of what this matter—in answer to this thing. I'm going to have to—and I'm being honest with you—I'm going to have to leave it at I don't know when I did it. It is an obvious answer to this.

Q. At Mr. Lynn's request—

A. It was an obvious answer. That's all I know.

• • • • • • • •

[482]

• • • • • • • •

Q. Now, sir, going back to Document 246 • • •. Is this one of the documents that you delivered to Kindel & Anderson?

A. I'm going to have to change it again and say no, because remember, when you first pulled it out, I said I didn't ever remember having a yellow thing in my files, and I said I could have had it. I could have had it from Lynn. I could have had it from Bill. McCook had sent me something, but it wasn't a normal thing for him to send me a copy of his things, than for me to send him a copy of mine.

Q. In connection with Document 246 did you have a photocopy of this document or another copy of this document in your files at any time?

A. No.

Q. I would like to hand you Document 247. Do you

[483]

have Document 247 in front of you?

A. Yes.

Q. Is this one of the documents you delivered to Kindel & Anderson?

A. (No response.)

Q. I am going to hand you again, sir, Document 1199, which has the blue handwritten notations down at the bottom. Do you see on 1199 there is a statement in the bottom line again, "Lee-McCook refers to Bill's letter of October 5, 1965 still interested"?

A. Yes.

• • • • • • • •

[484]

• • • • • • • •

In preparing this notation in handwriting on 1199, were you referring to this letter here which is 247?

A. I could have been, very well could have been.
Q. Well, do you recall?
A. That is the only way it makes sense.
Q. Do you know of any other letter?
A. Not of October 5.

• • • • • • • •

[494]

• • • • • • • •

Q. Were Documents 263 to 268 in your files in October, 1969?
A. In '69?
Q. Yes, sir.
A. Yes, sir.
Q. Were Documents 263 to 268 among the documents you made available to Mr. Hollander?
A. Yes.

• • • • • • • •

[505]

[November 26, 1975]

RAYMOND C. TURNBULL,

having been previously duly sworn, testified further as follows:

EXAMINATION (Resumed)

By Mr. Klitgaard:

• • • • • • • •

[522]

Q. Have you looked through your office now or your drawer of your file, wherever you presently keep documents to make sure you produced for us here all documents in your control relating to petroleum supply in American Samoa?

A. I have.
Q. Including all copies of everything?
A. Everything.
Q. Is your answer "Yes"?
A. Yes.

• • • • • • • •

[523]

• • • • • • • •

Q. I would like to hand you Document 1298 through 1318. Do you have this document in front of you?
A. Yes.
Q. This document is entitled "Plan for Compliance for Judgment of United States District Court with Respect to Usage of the Petroleum Storage Facilities in American Samoa." Do you have that—
A. Yes.

• • • • • • • •

[529]

• • • • • • • •

Q. Did you make any comments to Mr. Hollander or anyone at the Department of Justice concerning the plan proposed for sharing the petroleum storage facilities in American Samoa?
A. I talked to somebody. I talked to somebody about it. I talked to somebody about it. I don't know whether it was Hollander or in fact—I made— in fact, I made

[530]

a—I talked to—yeah, I did talk to somebody.
Q. Somebody at the Department of Justice?
A. I believe it was, yes.

• • • • • • • •

Q. How long ago was it that you talked to him?

A. I can't tell you.

• • • • • • • •

It had something to do—had something to do with—

Q. The plan for sharing petroleum facilities?

A. It had something to do with it.

Q. Are you referring to the plan 1361 to 1397?

A. Yes.

• • • • • • • •

A. • • • the plan, that I didn't go along with the plan, and so if I remember correctly, I put in a proposal.

[531]

I remember now. I did write a letter and—

Q. To whom?

A. Where would it have gone? To—It may have been Judge Conti's office, whoever was—whoever was—wherever I was supposed to send it, suggesting that we would be interested in coming back, and then going ahead on what I thought the way it should be handled, and I didn't think much of the Standard proposal—

• • • • • • • •

Q. Who is "we"?

A. Well, it would have been Bill McCook, if it had made any sense, because I didn't have the money, obviously.

Q. What did you tell Judge Conti was wrong with the proposed plan?

A. Well, I didn't —I—I didn't think it made any sense in the beginning, because it was sharing tanks and—which any competitor would be basically at the mercy of the Standard Oil Company bookkeeping alone, and I proposed that Standard Oil be divested of 50% of its business and start from scratch and suggested we put in new tanks, and that's the way we would want to come into it.

I forget exactly everything that was in it, and I proposed also that the whole thing be taken out of Pago Harbor and put into Nu'uuli Lagoon, if it made any sense, and if the native land could be acquired and the natives could approve it, the native Government.

Q. Anything else that you told Judge Conti?

[532]

A. Well, no, it was just a proposed—what would sound interesting to us.

• • • • • • • •

[533]

• • • • • • • •

Q. Do you have a copy of that proposal that you sent to Judge Conti?

A. No.

Q. Did you send that proposal to Mr. Hollander or to anyone at the Department of Justice?

A. I don't remember. However, I talked to—I sent it to—I think it went to Judge Conti. Judge Conti's Court—I'm not sure.

• • • • • • • •

[534]

• • • • • • • •

Q. Did you receive a response from whomever you sent that proposal to?

A. I don't recall.

Q. Do you have a copy of that proposal now?

A. No.

• • • • • • • •

EXAMINATION (Resumed)

• • • • • • • •

[682]

• • • • • • • •

Q. I would like to hand you, sir, Document 276 through 296. Do you have this document in front of you?

A. Yes.

Q. You will see that this is a packet of documents stapled together entitled "contents" on the first page.

A. Yes.

• • • • • • • •

Q. Was it one of the documents that was in your files in October, 1969?

A. What is—

Q. October, 1969 was the time when Mr. Hollander came to see you.

A. Yes, I believe it was.

Q. Was it one of the documents that you made available to Mr. Hollander?

A. I don't know whether I did or not.

• • • • • • • •

[707]

• • • • • • • •

Q. I would like to hand you Document 320. Do you have this document in front of you, sir?

A. Yes.

• • • • • • • •

Q. Was it one of the documents that you had in your file in October, 1969?

A. Yes.

Q. Was it one of the documents you made available to Mr. Hollander?

A. I believe it is.

• • • • • • • •

[743]

[December 1, 1975]

RAYMOND C. TURNBULL,

having been previously duly sworn, testified as follows:

• • • • • • • •

EXAMINATION (Resumed)

• • • • • • • •

[884]

• • • • • • • •

Q. I would like to hand you Document 505. Is that your handwriting, sir?

A. It is all my handwriting.

• • • • • • • •

Q. Was it one of the documents that was in your file in October, 1969?

A. I believe it was.

Q. Was it one of the documents that you made available to Mr. Hollander?

A. It may not have been available to Mr. Hollander. It may have been in a different file.

• • • • • • • •

[888]

• • • • • • • •

Q. Was 505 kept in any particular file in your office Mr. Turnbull?

A. Could have been in the dredging file. Everything about it is dredging.

Q. Can you think of any other file that it might have been in?

A. No.

• • • • • • • •

[891]

• • • • • • • •

Q. I would like to hand you Document 507. • • •

• • • • • • • •

Q. Is it one of the documents, sir, that was in your files, sir, in October, 1969?

A. I believe it was.

Q. Was it one of the documents that you made available to Mr. Hollander?

A. I don't—I don't believe it was. This is from the dredging file.

Q. Do you recall just a minute ago you showed us Document 506 which was in the dredging file and 505 which you thought was in the dredging file, and I ask, sir, why it is that you made the statement that you didn't deliver that document to Mr. Hollander?

A. It was in the dredging file to start with, and I don't see any references on the thing to any oil products anywhere.

• • • • • • • •

[906]

• • • • • • • •

Q. If Mr. Lynn had this document 507 in his files, do you know where he would have got the document if not from you?

A. I do not.

• • • • • • • •

[907]

• • • • • • • •

Q. I would like to hand you, sir, Document 508. Do you have this document in front of you?

A. Yes.

• • • • • • • •

Q. Is it one of the documents that you had in your files in October, 1969?

A. Yes.

• • • • • • • •

[908]

• • • • • • • •

Q. Is Document 508 one of the documents that you delivered to Mr. Lynn?

A. No recollection.

Q. Do you know where Mr. Lynn got Document 508 if he did not get it from you?

A. No recollection.

• • • • • • • •

[909]

• • • • • • • •

Q. Do you see, sir, the reference in item 3 to petroleum products?

A. Petroleum products, yes.

Q. And there are another few words after that. Can you read those for me?

• • • • • • • •

A. Petroleum products. "Another Samoan"—it looks like the word tie-in.

• • • • • • • •

[910]

• • • • • • • •

Q. Are these notes that you prepared before meeting with Governor Lee for the purpose of having the meeting with Governor Lee?

A. Very likely, I would say, yes.

• • • • • • • •

[911]

• • • • • • • •

Q. Did the meeting occur before the time that you left American Samoa in May or June of 1965?

A. Oh, yes.

• • • • • • • •

[914]

• • • • • • • •

Q. Was 511-512 one of the documents that you delivered to Mr. Lynn?

A. No recollection.

Q. Do you know where Mr. Lynn would have gotten 511-512 if not from you?

A. I don't know where he would have got it, no.

• • • • • • • •

[918]

• • • • • • • •

Q. • • • Do you have 515 in front of you?

A. Yes.

• • • • • • • •

Q. Is it one of the documents that was in your files in October, 1969?

A. '69, you say?

Q. Yes, sir.

A. I'm not sure, but I believe it was.

• • • • • • • •

Q. Was it one of the documents that you delivered to Mr. Lynn?

A. No recollection of delivering it to Mr. Lynn.

Q. Do you know where Mr. Lynn got document 515 if he didn't get it from you?

A. No, I don't.

[919]

• • • • • • • •

Q. Do you see Document 516?

A. Yes.

[920]

Q. Is that your handwriting on 516?

A. All of it, yes.

• • • • • • • •

Q. Is it one of the documents that you delivered to Mr. Lynn?

A. No recollection.

• • • • • • • •

[921]

• • • • • • • •

Q. Do you know where Mr. Lynn got this document 516 if he didn't get it from you?

A. I don't even know that he had it.

• • • • • • • •

Q. Do you know where he would have gotten—• • • it if not from you?

A. No, I don't.

• • • • • • • •

[933]

• • • • • • • •

Q. I would like to hand you Document 526. Do you have that document in front of you?

A. Yes.

• • • • • • • •

[934]

• • • • • • • •

Q. It that one of the documents you had in your file, sir, in October, 1969?

A. I believe it was.

• • • • • • • •

Q. Is 526 one of the documents you delivered to Mr. Lynn?

A. No recollection.

Q. Do you know where Mr. Lynn got a copy of Document 526, if not from you?

A. No.

• • • • • • • •

[1012]

[December 2, 1975]

RAYMOND C. TURNBULL,

having been previously duly sworn, was further examined and testified as follows:

EXAMINATION (Resumed)

BY MR. KLITGAARD:

• • • • • • • •

Q. Did you bring with you this morning the file folder from which you extracted the documents produced at your deposition last week?

A. Yes.

• • • • • • • •

• • • • • • • •

[1016]

• • • • • • • •

MR. KLITGAARD:

Document No. 1638 is a file entitled "P.C.P.C. — General Letters File."

• • • • • • • •

The next file that we have numbered is a file folder entitled "Pacific Coconut Info." The number on this file folder is 1641.

[1017]

The next file folder is Document 1642. This file folder is entitled "Miscellaneous Correspondence R.C.T."

The next file folder is 1643. This is entitled "Pago—Plant Dock Prints Walker-Moody Co."

The next file folder is Document 1644. This folder is entitled "Mobil Petroleum Corporation Correspondence."

The next file folder is No. 1645. This folder is entitled "Unoco Correspondence and Survey."

The next file folder is 1646. This file folder is entitled "Summit Industrial Corporation Correspondence."

The next file folder is No. 1647. This is entitled "Petroleum—Confidential/Bank of America—P.C.P.C."

The next file folder is entitled "Correspondence—Gov. Lee Year 1965." This file folder is 1648.

Finally, the 10th file folder is entitled "Original Lease and Lease Agreement—GAS."

• • • • • • • •

[1020]

• • • • • • • •

MR. KLITGAARD: Q. Where did you locate these 10 file folders which you produced this morning?

A. In my bottom drawer of my desk.

Q. Do you have any other file folders at your home or in your files that relate to petroleum products in American Samoa?

A. Didn't find any.

• • • • • • • •

[1022]

• • • • • • • •

Q. And have you produced for us all the petroleum documents that you have?

• • • • • • • •

[1023]

A. Yes.

• • • • • • • •

Q. Did you have these file folders in your office on Wilshire Boulevard in 1969?

A. Yes.

• • • • • • • •

[1024]

• • • • • • • •

MR. KLITGAARD: Q. Did you have any file folders in your office in 1969 that referred to petroleum products in American Samoa other than the file folders that you have produced here this morning?

A. Yes, I did.

• • • • • • • •

[1025]

• • • • • • • •

Q. From 1969 until the time that you moved your office from Wilshire Boulevard to your home, did you throw away any file folders in your desk drawers or in your files?

A. I don't remember having destroyed any.

• • • • • • • •

[1029]

• • • • • • • •

Q. I will hand you file No. 1638. Is that one of the files that you made available to Mr. Hollander in October, 1969?

A. I don't have any recollection of it.

Q. I will hand you file No. 1641. Is that one of the files that you made available to Mr. Hollander in October, 1969?

A. I have no recollection of having delivered it to Mr. Hollander.

Q. I will hand you file 1642. Is that one of the files that you made available to Mr. Hollander in 1969?

A. It may have been, but I have no recollection of it specifically or generally.

Q. I will hand you file No. 1643. Is that one of the files that you made available to Mr. Hollander in 1969?

A. No, I don't believe so.

Q. Why do you say you don't believe so?

A. Because I don't—I don't remember holding out any —bringing out any Walker-Moody documents concerning plants. It was of no import unless it was tied to petroleum.

• • • • • • • •

Q. Are you saying that you didn't deliver any of

[1030]

the contents of this file 1642?

A. I said I don't know whether I did or not. I have no recollection of it.

Q. I hand you file 1644. Is that one of the files you delivered to Mr. Hollander?

A. I wouldn't have handed him a file—

Q. What is the title on that file, sir?

A. "Mobil Petroleum Corporation Correspondence."

Q. What did you hand him with regard to Mobil Petroleum correspondence?

A. I don't remember what I handed him in accordance with it. The contents of it he may have got. I don't remember.

Q. Is it your testimony that you don't remember delivering to him this particular file?

A. I don't remember giving him the file, no.

Q. • • • I would like to hand you file 1645. Did you give that particular file folder to Mr. Hollander?

A. I have no recollection of giving it to Mr. Hollander.

Q. Did you give the contents of that file folder to Mr. Hollander?

A. I may have.

Q. Did you give any file folders to Mr. Hollander?

A. I don't know whether I did or not.

Q. I will remind you, sir, in the first day of your deposition you said that you did give file folders to Mr. Hollander. Do you wish to change that testimony?

[1031]

• • • • • • • •

A. I told you I brought everything out and put it on the desk.

Q. When you say "everything," what were you referring to?

A. I'm talking about everything that I figured had anything to do with petroleum.

Q. Did you pull out file folders and put them on the desk in front of Mr. Hollander?

A. I may have. I don't know.

Q. Did you pull out documents separate from the file folders and put them on the desk?

A. I believe I did.

Q. Do you recall giving Mr. Hollander any documents in a file folder?

A. No, I don't specifically or generally—I do not remember.

• • • • • • • •

[1033]

• • • • • • • •

Q. I am going to hand you Document 1646. What is the title of that file?

A. "Summit Industrial Corporation Correspondence."

Q. Is that one of the file folders that you delivered to Mr. Hollander?

A. I don't have any recollection of this specific one.

Q. Do you recall delivering that specific file folder to Mr. Hollander?

A. No, I don't remember.

• • • • • • • •

[1040]

• • • • • • • •

Q. Sir, I would like to direct your attention to Document 1647. Do you have that file folder in front of you?

A. Yes.

Q. What is the title on that folder?

A. "Petroleum — Confidential / Bank of America — P.C.P.C."

Q. Did you deliver that particular file folder to Mr. Hollander, sir?

A. I don't remember having done so.

• • • • • • • •

[1056]

• • • • • • • •

Q. Sir, yesterday you referred to a dredging file in which you obtained documents. Do you recall the reference to the dredging file?

A. Yes.

Q. Which one of these files that you brought with you here today, sir, is the dredging file?

A. I don't see any dredging file. • • •

Q. Did you see the dredging file last night among the folders in your desk?

A. No, I didn't.

Q. When was the last time you saw the dredging file?

A. I can't recall.

Q. Was it more than a year ago?

A. I can't recall.

• • • • • • • •

[1077]

• • • • • • • •

Q. Was it [1178-1180] one of the documents you had in your files in October, 1969?

A. I would have had it in my files in 1969.

Q. Was it one of the documents, sir, that you made available to Mr. Hollander?

A. I have no recollection of having made it available to Mr. Hollander.

• • • • • • • •

[1086]

• • • • • • • •

Q. Was [1183] it one of the documents you had in your files in October, 1969?

A. Yes.

Q. Was it one of the documents you made available to Mr. Hollander?

[1087]

A. I don't recollect having made it available to him.

• • • • • • • •

[1091]

• • • • • • • •

Q. Was it [1185-1187] one of the documents that you had in your file in October, 1969?

A. I believe it was.

Q. Was this one of the documents that you made available to Mr. Hollander?

A. I have no recollection of making it available to Mr. Hollander.

• • • • • • • •

[1098]

• • • • • • • •

Q. Was it [1188] one of the documents in your file in October, 1969?

A. I believe it was.

• • • • • • • •

Q. Was this one of the documents that you made available to Mr. Hollander?

A. No recollection of having made it available to Mr. Hollander.

• • • • • • • •

[1103]

• • • • • • • •

Q. Is it [1192-1197] one of the documents you had in your files in October, 1969?

A. Yes.

Q. Was it one of the documents that you made available to Mr. Hollander?

A. I don't recall giving it to Mr. Hollander.

• • • • • • • •

[January 28, 1976]

[1245]

RAYMOND C. TURNBULL,

having been previously sworn, testified as follows:

EXAMINATION (Resumed)

By Mr. Klitgaard:

• • • • • • • •

[1311]

• • • • • • • •

Q. Are you satisfied you produced for us now all the documents concerning American Samoa?

A. (No response.)

Q. Beg your pardon?

A. Yes.

• • • • • • • •

d. DEPOSITION: MARCH 29, 1976: SULLIVAN, JONES & ARCHER

United States District Court for the
Central District of California

(Title omitted in printing)

• • • • • • • •

[3]

LYLE L. JONES,

a witness herein, called by the defendant STANDARD OIL COMPANY OF CALIFORNIA, and being first duly sworn, testifies as follows:

EXAMINATION BY MR. KLITGAARD:

Q. Would you state your full name.

A. Lyle L. Jones.

Q. Your present address?

A. Sullivan, Jones and Archer, 600 B Street, Suite 1400, San Diego, California 92101.

Q. Is Sullivan, Jones and Archer a law firm?

A. Yes, it is.

Q. Is it a partnership?

A. Yes.

Q. Are you one of the general partners?

A. No—I am of counsel to the firm.

Q. You are appearing here today pursuant to Subpoena Duces Tecum on behalf of Sullivan, Jones and Archer?

A. Yes, I am.

• • • • • • • •

[32]

• • • • • • • •

Q. I would like to hand you now SDX-4725, which is an envelope dated August 15, 1970, from Raymond C. Turnbull to Lyle L. Jones. Do you have this document in front of you?

A. Yes.

• • • • • • • •

Q. At the lower left-hand side of the address label on

[33]

this envelope do you see the words, "ATT: Mr. Lynn"?

A. Yes.

Q. It that your handwriting?

A. No.

Q. Do you know whose handwriting it is?

A. I can only assume it came from Mr. Turnbull. May I explain the circumstances of this?

Q. Yes, certainly.

A. Mr. Lynn, who was attorney for Mr. Turnbull, made an appointment with us, and I told him to bring down—or perhaps Jim Sullivan talked to him; I am not sure—to bring down whatever documentation he had, and he had Mr. Turnbull send this package of documents to him at our address at the time he was coming down for an interview.

Q. In other words, Mr. Lynn asked Mr. Turnbull to send documents to Mr. Lynn care of your address here in San Diego?

A. That is right, and I think it was at the time of the first interview he had with us—I am not sure.

• • • • • • • •

[56]

• • • • • • • •

Q. On August 19, 1970, you sent a set of Xerox copies of documents to Mr. Lynn—correct?

A. Yes.

Q. And those were copies of the documents that were given to you by Mr. Turnbull?

A. I presume so, from this letter.

• • • • • • • •

[82]

• • • • • • • •

Q. Did you return documents to Mr. Lynn—either photocopies or originals—on any occasion other than the August 19, 1970 letter?

A. To the best of my knowledge, the only transmittal of documents to Lynn were reflected in that correspondence that we mentioned before.

Q. In the August 19, 1970, letter?

A. Yes.

• • • • • • • •

e. DEPOSITION: MARCH 29, 1976: LYLE L. JONES

United States District Court for the
Central District of California

(Title omitted in printing)

• • • • • • • •

[3]

LYLE L. JONES,

a witness herein, called by the defendant STANDARD OIL COMPANY OF CALIFORNIA, and being first duly sworn, testifies as follows:

EXAMINATION BY MR. KLITGAARD:

Q. State your full name, please.

A. Lyle L. Jones.

Q. Your business address?

A. 600 B Street, Room 1400, San Diego, California.

• • • • • • • •

Q. Are you appearing here today pursuant to Subpoena Duces Tecum served upon you as an individual?

A. I am.

• • • • • • • •

[7]

• • • • • • • •

Q. I'm going to hand you document 436, which is a copy of the letter dated August 19, 1970, from you to Mr. Lynn. Do you see that?

A. Yes.

Q. And this is a document that we discussed in the deposition earlier today concerning Sullivan, Jones and Archer. Do you recall that?

A. Yes.

Q. Now, you see here the statement in the first sentence, "Enclosed for you[r] file is a set of the Xerox copies of the documents forwarded to us by Mr. Turnbull"?

A. Yes.

• • • • • • • •

[15]

• • • • • • • •

Q. Now, having looked through 4766 in the photocopy file through 4834 in the photocopy file, do you recognize that set, 4766 through 4834, as a Xerox set of the documents which you sent back to Mr. Lynn on August 19, 1970?

A. I am quite sure that is the case.

• • • • • • • •

[19]

• • • • • • • •

Q. At any time did Mr. Hollander or anyone at the Department of Justice send you a copy of documents TU-1 to TU-100?

A. Never.

Q. At any time did anyone at all send you a copy of documents TU-1 to TU-100 of that set?

A. Well, I think there's some in there that are marked, so I have received whatever is in there.

Q. But apart from what you produced at your deposition today, have you at any time received any set of documents TU-1 to TU-100?

A. No.

• • • • • • • •

[24]

• • • • • • • •

Q. Do you recall that the deposition of Mr. McCook was taken on March 23, 1971?

A. • • • [Y]es.

Q. • • • [D]id you have a meeting with Mr. McCook or Mr. Lynn immediately following his deposition?

A. Yes, I did.

Q. By "his deposition," I mean immediately following the McCook deposition.

A. Yes.

Q. Where did that meeting take place?

• • • • • • • •

[25]

• • • • • • • •

A. • • • My meeting with them was very close to his [Lynn's] office, but in a hotel, and we sat in the lobby, and I think we went into the bar and had one drink, and the interview was not very informative, and I still didn't know

the answers to the questions that I really wanted the answers to.

Q. These are the questions raised in your letter of January 26, 1971?

A. Yes.

Q. Who was present at the meeting?

A. Well, I think at first—well, I don't know. • • •

Q. Let me refresh your recollection. On March 23, 1971, Standard took the deposition at 9:15 a.m. of Richard B. Lynn, and then at approximately 10:30 a.m. that same morning it took the deposition of William R. McCook, and it was finished with both depositions at sometime around noon on March 23, 1971. Mr. Turnbull was not deposed that day.

A. All right.

• • • • • • • •

Then I think I met both of those gentlemen the first time there that day.

[26]

Q. You met both Turnbull and McCook?

A. I think so. Now, I may be wrong about that, but that is my present recollection. I thought that if McCook was deposed and Turnbull was not, I think I met Turnbull first and talked to him for about an hour, and then when the deposition was over I think that McCook joined the conversation, as did Lynn • • •

Q. In talking with Mr. Turnbull at first, did Mr. Turnbull have with him any documents?

A. No.

• • • • • • • •

[42]

• • • • • • • •

Q. I would like to hand you now document 425. Do you have that document in front of you?

A. Yes.

Q. Do you see this is a telegram dated April 23, 1971, from Mr. Lynn to Mr. Mussman?

A. Yes.

• • • • • • •

[43]

• • • • • • •

Q. Prior to sending this letter of April 23, 1971, to

[44]

Mr. Mussman did Mr. Lynn contact you at any time, going back as far as you can remember, to find out if you had gotten any additions to your file to TU-1 to 100 in your files in San Diego?

A. Not to my recollection.

• • • • • • •

Q. • • • [I]n the present case I asked Mr. Lynn at his deposition on October 14, 1975 the following question referring to page 121 of the transcript, starting at the top:

"Question: In connection with sending this telegram, it is your testimony that you did not go out physically to the Turnbull and

[45]

McCook offices and look at whatever files may have been in the file drawers in those offices?

"Answer: That's correct.

"Question: Did you contact Mr. Turnbull and Mr. McCook concerning any additional documents?

"Answer: I'm sure that I contacted both of them with a final request that they tell me that in there, to the best of their knowledge and belief, there was nothing further that had not already been produced.

"Question: Their answer was they did not?

"Answer: And their answer was they did not."

Now, turning to your firm at line 14—do you see line 14?

A. Yes.

Q. "Question: Did you also make the same request to the Sullivan firm in connection with this telegram?"

Do you see that?

A. Yes.

Q. "Answer: I am quite sure I did.
"Question: Was their answer the same?
"Answer: Their answer was the same."

Now, do you see that part of the transcript?

A. Yes.

Q. I am asking you now, Mr. Jones, to search your recollection to the best of your knowledge. I'm going to ask you, having reviewed this testimony by Mr. Lynn, do you have any [recollection]

[46]

of Mr. Lynn having contacted you prior to sending this telegram of April 23, 1971, to find out if you had any documents in your files in addition to TU-1 to 100?

A. I have none whatever—no recollection.

Q. Do you have any recollection of anyone reporting to you in your firm that they had been contacted by Mr. Lynn concerning additional documents other than TU-1 to 100 prior to April 23, 1971.

A. No.

• • • • • • •

Q. If the request had been made would you have searched your files?

A. Certainly.

Q. And if you found documents in addition to TU-1 to 100 would you have sent them to Mr. Lynn?

A. Certainly.

Q. Are you aware as of today there are documents in your files in addition to TU-1 to 100?

A. I gathered that from what we have seen this

[47]

morning.

• • • • • • • •

Q. Now, directing your attention to pages 104 and 105 of the Lynn deposition, starting at line 18:

"Question: Did Mr. Hollander discuss this particular request with you as embodied in this letter of April 3, 938, 939?

"Answer: I'm sure we discussed the text of this.

"Question: Do you recall what Mr. Hollander said?

"Answer: To the best of my recollection, Mr. Hollander said that he would be in touch with Mr. Mussman, and I indicated that I would do the same, and I am sure that I at that point indicated that I would contact the San Diego firm, and again contact Mr. Turnbull and Mr. McCook."

Do you see that part of the transcript?

A. Yes.

Q. And going on, on page 105:

"Question: You

[48]

indicated this to whom?

"Answer: To Mr. Hollander.

"Question: Did you in fact contact the San Diego firm again after this April 3 letter?

"Answer: I am sure I did.

"Question: Did you ask them if they had any documents in addition to the ones that had been produced?

"Answer: I'm sure I did.

"Question: What was their response?

"Answer: And their response was that they had none."

Do you see that testimony?

A. Yes.

Q. Now, having reviewed this testimony at pages 104 and 105 of the October 14 deposition of Mr. Lynn, do you now recall any contact from Mr. Lynn after this April 3, 1971, letter concerning any documents in your files in addition to TU-1 to 100?

A. I have no recollection.

Q. No recollection of any contact?

A. I am quite sure he did not call me.

Q. Was it ever reported to you that he had contacted anyone else in your firm?

A. No, it was not. If he did, I don't remember.

Q. Did anyone else in your firm ever report to you after April 3, 1971, that Mr. Lynn had contacted them to find out if there were any documents in your files in addition to

[49]

TU-1 to 100?

A. What time is this, now?

Q. After April 3, 1971.

A. No. I have no recollection of it. I have no notes that would suggest it, and I don't think it happened.

• • • • • • • •

A. I have one note here dated—well, I wrote to Mr. Lynn on May 26, in which I said that the deposition of Mr. McCook that I had requested in my previous letter had not been received, "nor have I been able to get through to you by telephone over the past few weeks." That had to do with the bill, and I think that I would recall had he called me in the meantime to ask about the documents • • •

• • • • • • • •

Q. From the date of the McCook deposition, which was March 23, 1971, until the date that [you] wrote that letter that you just referred to [letter dated May 26] did you have any telephone communication at all with Mr. Lynn?

A. I do not know. I have no recollection of any, but it's perfectly possible. I do know that at some time there I was trying to reach him over a period of weeks, and could get no answer.

• • • • • • • •

f. DEPOSITION: MARCH 30, 1976: JAMES O. SULLIVAN

United States District Court for the Central District of California

(Title omitted in printing)

• • • • • • • •

[3]

JAMES O. SULLIVAN,

a witness herein, called by Defendant Standard Oil Company of California, pursuant to Notice of Deposition and Subpoena Duces Tecum re: Deposition, and being first duly sworn, testifies as follows:

EXAMINATION BY MR. KLITGAARD:

Q. State your full name.

A. James O. Sullivan.

• • • • • • • •

Q. What is your business address?

A. 600 B Street, San Diego, California.

Q. Are you a partner in the law firm of Sullivan, Jones and Archer?

A. I am.

• • • • • • • •

[17]

• • • • • • • •

Q. • • • [I]f you will look in your file folder for a minute —4923—you will see at the bottom a yellow sheet which is a new matter memorandum prepared under date of August 17, 1970.

A. Yes. All right.

Q. And you see in the new matter memorandum that Mr. Lynn is listed as the client?

A. Yes, sir.

Q. And that the matter involves a claim by Mr. Turnbull and Mr. McCook, or Pacific Coconut Processing Company against Standard Oil Company of California?

A. A possible claim, yes, sir.

Q. And do you see that on that file memorandum you are shown as the billing partner?

A. Yes, sir.

• • • • • • • •

[39]

• • • • • • • •

Q. Prior to Mr. Lynn's deposition on March 23, 1971, did Mr. Lynn contact you to ask you if you had any documents in your files in addition to TU-1 to 100?

A. Not that I recall.

Q. Or in addition to the documents that had been delivered to Standard, regardless of whatever designation they might be.

A. Not that I recall.

Q. Was it reported to you by anyone in your firm that prior to Mr. Lynn's deposition on March 23, 1971, that Mr. Lynn contacted anyone in your firm to determine if your firm or anyone in it had any documents in addition to TU-1 to 100?

A. Not that I recall.

• • • • • • • •

[47]

• • • • • • • •

Q. I would like to show you next document 529, which is a copy of a Telex that was sent to Mr. Mussman on April 23, 1971. I will show you the Telex, itself, which is document 956.

A. Yes, sir.

• • • • • • • •

Q. And for simplicity of your discussion I will just refer now to document 529.

A. Yes, sir.

Q. Prior to sending that document, 529, to Mr. Mussman did Mr. Lynn contact you at any time to determine if you had any documents in your files in San Diego in addition to TU-1 to 100?

A. Not that I can recall.

Q. Was it ever reported to you by anyone in your firm that anyone in your firm had been contacted by Mr. Lynn prior to April 23, 1971, to find out if you had any documents in your files in addition to TU-1 to 100?

A. Not that I recall.

Q. Or in addition to any of the documents that may have been delivered previously by the Government to Mr. Mussman in the Government case?

A. Not that I recall.

Q. Prior to April 23, 1971, and in the time period now

[48]

from January 13, 1971, to April 23, 1971—do you have that time period in mind?

A. I do.

Q. Did you at any time personally look into the files of Sullivan, Jones and Archer, or the files of your firm by whatever name it was then known to determine if you had any documents in those files in addition to TU-1 to 100?

A. I am almost certain I did not.

Q. Was it ever reported to you that anyone else in your firm had gone back into the files of your firm during that time period, January 13, 1971, to April 23, 1971, to see if your firm had any documents in its files in addition to TU-1 to 100?

A. Not that I recall.

• • • • • • • •

[65]

[Q.] • • • I will hand you the documents, and my question will be to these specific documents, as to whether you recall seeing any of these documents before today. We will take them one by one. I hand you document SDX-92, which is a chart.

A. No.

Q. You don't recall seeing a copy of that document before today?

A. Correct.

Q. 104?

A. I don't believe so.

• • • • • • • •

[67]

• • • • • • • •

Q. 247?

A. Can counsel inform me whether there was a copy of this in our file?

Q. 247?

A. Yes.

Q. We did not find a copy of 247 in your file.

A. I don't believe so.

Q. Do you have some recollection of the subject matter of 247 being discussed with you at some time?

[68]

A. Yes, just vaguely.

Q. When did that discussion occur?

MR. KANE [counsel for plaintiff William R. McCook]: I should make a statement for the record at this point. You have asked that question several times before as to the discussion of the subject matter of the letter, and I am not quite sure what that question means. I am not sure what the witness's answer means. If you mean discussing the subject matter of the letter within the context of it being in a letter, that's one thing; on the other hand, the letter could refer to any number of subjects that might have been discussed totally apart from that letter, as such. If your question is the first one, it seems to me it falls within the parameters of this deposition. If your question is the second one it seems to me it goes to matters which are more substantively under the attorney-client privilege.

THE WITNESS: With that point of clarification, the first answer is that I have no recollection whatsoever of having discussed exhibit 247 with anyone.

BY MR. KLITGAARD:

Q. Do you have a recollection of having discussed the content of 247 with anyone?

A. No specific recollection as to whether it was a discussion or whether it was a work product memo prepared by our firm.

Q. I am not asking you what the decision was, again. Did the work product memo or the discussion refer to the facts or to the statements set forth in document 247?

[69]

MR. KANE: I think that the question, itself, relates to matters covered by the attorney-client privilege. • • •

MR. KLITGAARD: I am not trying to find out what the

substance of the discussion was—just whether the discussion occurred involving facts that were in here—going no further than that.

THE WITNESS: I have no recollection of having had any discussion with anyone during which Exhibit 247, as such, was mentioned, and I have no recollection of seeing any document that referred to Exhibit 247.

BY MR. KLITGAARD:

• • • • • • •

[71]

• • • • • • •

Q. Turning back, though, again to this specific document, 247, and to the statements that are made in there by Governor Lee as of the date of that letter, November 16, 1965, has that subject matter—referring to the matters set forth in that letter—as of the date of that letter been discussed with you?

MR. KANE: I object to the question, because that clearly goes beyond the documentation, as such, and goes in[illegible]he area of privileged communications and work product on the part of an attorney consulted by Mr. McCook through his other attorney, Mr. Lynn, of an evaluation of the subject matter of this lawsuit. It clearly goes beyond document discovery.

THE WITNESS: Since this gentleman is now representing the interests of the client, I won't answer the question.

• • • • • • •

9. DEPOSITION: APRIL 20, MAY 8, 1976: HOWARD L. WINTON

United States District Court for the

Central District of California

(Title omitted in printing)

• • • • • • •

[April 20, 1976]

[3]

HOWARD L. WINTON,

having been duly sworn, testified as follows:

EXAMINATION

BY MR. KLITGAARD:

Q. State your full name, please.

A. Howard L. Winton.

Q. What is your present business address?

A. 2040 Avenue of the Stars, Fourth Floor, Los Angeles, 90067.

Q. What is your present occupation?

A. Attorney.

• • • • • • • •

Q. Are you appearing here today pursuant to subpoena duces tecum, Mr. Winton?

A. Yes.

• • • • • • • •

[4]

• • • • • • • •

Q. How long have you been engaged in the practice of law?

A. Twenty-four years.

• • • • • • • •

[11]

• • • • • • • •

Q. Do you recall having consultations with Mr. Raymond C. Turnbull concerning a claim against Standard Oil Company involving American Samoa?

A. Yes.

• • • • • • • •

[17]

• • • • • • • •

Q. Did Mr. Gross [Mr. Winton's law clerk] work with you in connection with your work on behalf of Mr. Turnbull?

A. Yes.

• • • • • • • •

Q. Would you describe what Mr. Gross did?

• • • • • • • •

• • • Mr. Gross did spend considerable time with Mr. Turnbull going over various documents, and all that I recall is that they were fairly

[18]

voluminous in nature.

I guess that is a poor way to describe it, but that is my actual recollection, that Mr. Turnbull had a number of pieces of paper, whether they were more letters, more legal documents, or more something of another kind or nature, I really don't know, but that was the first thing. Mr. Gross was to and did spend considerable time with Mr. Turnbull and without Mr. Turnbull going over the documents and getting them in some kind of sequence or order so that he, Mr. Gross, and I could discuss the documents, and I could look them over and purport to know what I was talking about, and also so that I would be appropriately prepared for any meetings or discussions of my own with Mr. Turnbull.

The other thing that Mr. Gross did was consult with me and do some research. • • •

• • • • • • • •

[May 8, 1976]

[24]

• • • • • • • •

Q. You mentioned that you had some contact with Mr. Turnbull in 1969?

A. Yes.

Q. Do you recall who initiated that contact with you?

A. Mr. Turnbull called me.

• • • • • • • •

[25]

• • • • • • • •

Q. After Mr. Turnbull telephoned you, did you meet with him at some later date?

A. Yes.

• • • • • • • •

Q. Did Mr. Turnbull meet with you on more than one occasion?

A. Yes, I believe there were several meetings.

[26]

Q. Where did these meetings occur?

A. As I recall, the meetings were at my office, which was then at 6380 Wilshire Boulevard, and we had one meeting at an office downtown. The firm, I believe, was Simon, Sheridan, et cetera, and one of the partners was Mr. Medvene, Edward Medvene, whom I had recommended or suggested to Mr. Turnbull, and I recall one meeting there. That is the only meeting I recall.

Q. You only recall one meeting with Mr. Medvene?

A. That is all I recall.

• • • • • • • •

[29]

• • • • • • • •

Q. At that meeting with Mr. Turnbull, referring now to the first meeting—do you have that in mind?

[30]

A. Yes.

• • • • • • • •

Q. Did Mr. Turnbull bring any documents or papers with him to that meeting?

A. I don't recall whether it was to that meeting or a subsequent meeting, or whether he brought documents in when I wasn't there and left them for my review. I really have no recollection, but some documents were brought in.

• • • • • • • •

[34]

• • • • • • • •

Q. In 1969, was it your custom when documents were brought into your office for review to put the documents in chronological order or have them put in chronological order?

A. Yes.

Q. To the best of your recollection, did Mr. Gross put the documents that Mr. Turnbull brought into your office in chronological order?

A. I am quite sure he did.

• • • • • • • •

[40]

• • • • • • • •

Q. I would like to hand you a document that has been previously produced in this case and marked SDX 430-433, which is an opinion letter dated November 28, 1969. Do you have 430-433 in front of you?

A. Yes.

• • • • • • • •

[54]

• • • • • • • •

Q. After you wrote Document 430-433, did you have any further meeting with Mr. Turnbull?

A. I don't think there was any meeting. I believe he came in and picked up his files at some subsequent time. Whether he actually sat and talked any further about the circumstances at that time, I don't recall.

Q. Do you recall how long it was after this letter that Mr. Turnbull came in and picked up his files?

A. No, I really don't except that it wasn't very long. I think he contacted me either by letter or by phone after I sent this letter 430-433, and we talked along the general lines that he wanted some consideration of a different or lesser fee arrangement • • • and when I said that wouldn't be something we could work out, then after that he came in and picked up his files.

• • • • • • • •

[55]

• • • • • • • •

Q. Is it your best recollection that it was within a month or two?

A. Yes, that is my best recollection.

• • • • • • • •

[61]

• • • • • • • •

Q. In reviewing Mr. Turnbull's documents, did you ask him at any time to go back and see if he had additional documents that might provide helpful information to you?

A. I don't believe that was ever mentioned. I believe that the context in which he brought in whatever he brought in was that these were the documents that he had in his possession that he wanted to have reviewed, and I don't recall ever asking him anything in the nature of what you mentioned.

• • • • • • • •

[64]

• • • • • • • •

Q. At the time [October, November, 1969] did Mr. Turnbull appear to be familiar with the documents that were in his files?

A. Yes, he did.

• • • • • • • •

[66]

• • • • • • • •

Q. If he had told you that Mr. McCook had such documents [concerning petroleum in American Samoa], would it have been your normal practice to have those documents brought to you?

A. I believe so. I believe that if he had mentioned any documents that he might have had in his possesion or that someone else had that he might have had access to, it seems to me that I definitely would have asked for them, and I don't recall anything like that.

• • • • • • • •

[74]

• • • • • • • •

Q. I would like to show you now, Mr. Winton, • • • some documents that Mr. Turnbull delivered to Mr. Sullivan and Mr. Jones in San Diego, in the period July or August 1970 • • •

• • • • • • • •

[78]

• • • • • • • •

Q. I am showing you 4701-4702. Have you seen that document before today?

A. I have the same general recollection as I just mentioned about the last document. I think I have seen this.

I notice Prince Tungi, Governor Lee, some mention of Star-Kist and some of the types of details that it seems to me I did see in some document or another. I would have to say that I saw both the last document and this one.

Q. Referring to 4700 and 4701 and 4702?

A. Correct.

Q. Have you seen 4703-4704 [TU 79-80] before today?

A. I think so. I think that is one of the ones I saw, also. The same general ring-a-bell type of thing, the Governor, and some mention of Star-Kist and various other items. I think I saw all the ones I mentioned and that one.

Q. Have you seen 4705 [TU 70] before today?

A. The same answer as for my last two questions. I think this is one of the documents that I saw.

• • • • • • • •

Q. Have you seen 4708-4709 before today?

A. Yes, I believe I did. I believe that was one of the documents that Mr. Turnbull brought in.

• • • • • • • •

[79]

• • • • • • • •

Q. Have you seen 4712-4713 [TU 71-72] before today?

A. I believe I did see this one, yes. I believe this is one of the ones that I recall seeing.

• • • • • • • •

Q. Have you seen 4716, 4717 and 4718 before today? You will note that 4716 and 4717 is a letter, and 4718 is an attachment to the letter.

A. I think I saw this, too. I think I recall seeing this.

Q. Referring to the entire document?

A. Yes, I recall seeing it.

• • • • • • • •

Q. Have you seen 4720-4722?

A. I think I did. I think that is one of the ones I saw, too, all three of those pages. That rings a bell.

Q. Referring to Oceanic Petroleum Corporation?

A. Yes.

Q. That is a financial report on Oceanic Petroleum Corporation?

A. I truthfully didn't read it to determine what it was. I am just trying to remember whether I had seen it before, and it seems to me that I had.

[80]

• • • • • • • •

Q. Have you seen 4736 [TU 11] before today?

A. I think so. I think I saw that one.

• • • • • • • •

[81]

• • • • • • • •

Q. I will show you now 4758 and 4759. 4759 is the earlier document, and 4758 appears to be the response. Will you look at both of those documents?

• • • • • • • •

[82]

A. • • • Yes, I believe I saw both of these.

Q. 4758 and 4759?

A. Yes.

Q. I am handing you Documents 4760 and 4762, which again appear to be related correspondence. I believe that 4762 is the first one.

A. Yes, I believe I saw those.

Q. 4760 and 4762?

A. Correct.

Q. Did you see the envelope, which is 4761?

A. I don't recall. I see it now, but I don't recall.

[91]

Q. Have you seen Document No. 107 [TU 20] before?

A. I believe I saw that one.

• • • • • • • •

Q. Have you seen Document 109 [TU 21] before?

A. I believe I did see that one. I remember the second paragraph especially.

Q. You mean the reference to Chief Pele?

A. Yes, I believe I saw that.

• • • • • • • •

[93]

• • • • • • • •

Q. I will show you Document 113 [TU 7]. Have you seen that document before?

A. I believe I have, and it is the third paragraph that I am quite certain I saw in this letter.

• • • • • • • •

[94]

• • • • • • • •

Q. Have you seen 123-124 [TU 23-24] before?

A. Yes, I believe I have seen this as distinguished from just remembering the language. Especially, I believe I saw this letter because of the reference to the Tongans, what time they start work and what time they finish work and the paragraph about the cost of dredging out the bay,

[95]

et cetera. I believe I saw this letter.

• • • • • • • •

Q. Have you seen 127 [TU 27] before?

A. I believe I saw that letter.

Q. Have you seen 128 [TU 28] before?

A. I believe I saw that letter.

• • • • • • • •

Q. Have you seen 135 before?

A. Yes, I recall that. I recall seeing that.

[96]

Q. Have you seen 136 before?

A. Yes, I believe I saw that, also.

Q. Have you seen 137 before?

A. Well, I am not certain. I have a—I believe I did, but I may simply be recalling the one or two just before this. In other words, it is kind of a—kind of together in my mind, the letterhead, Walker-Moody.

Q. You mean the general letterhead?

A. Yes. So, whether I saw one or more than one, I really don't recall.

Q. You said you saw 135 before and 136?

A. Yes, and I have a specific recollection of that letter.

Q. 135?

A. Right, • • •

• • • • • • • •

Q. Are you familiar with the subject matter of 137?

A. • • • Not to the same extent that hit my mind when I saw 135.

• • • • • • • •

[97]

• • • • • • • •

Q. I would like to show you 140 [TU 15]. Have you seen that before?

A. I am quite certain I saw that before, yes.

• • • • • • • •

Q. Have you seen 146 [TU 19] before?

A. I believe so. I believe I saw that.

[100]

* * * * * * * *

Q. Have you seen 170 [TU 48] or 171 before?

A. I believe I did. I believe I saw those.

Q. You saw both of them?

A. I believe so.

* * * * * * * *

[103]

* * * * * * * *

Q. I am showing you a set of documents now from Chicago Bridge & Iron, and these documents run from Nos. 192 through 212. 192-194 is a letter from Chicago Bridge & Iron. 195-199 and up to and including 200 is a set of engineering specifications * * *

[104]

At the end we have the written specifications in addition to the engineering specifications. The written specifications are numbered 201-212. Will you look through those documents for me, please?

A. I believe I recall 192-194. I do not recall 195. I may have seen it. I just don't recall it. I don't recall 196. I don't recall 197, 198, 199 or 200. I believe I do recall 201, 202, 203, and I believe I also recall 204, 205, 206.

* * * * * * * *

[105]

* * * * * * * *

Q. I will show you Document 213-214 [TU 67-68]. Have you seen that before?

A. Yes, I believe I have seen this. This is just full of language that I recall, and I think it would be too much of a coincidence for so much of the language to be in one letter. I think I saw that.

Q. Is that your best recollection?

A. Yes.

* * * * * * * *

[109]

* * * * * * * *

Q. Have you seen Document 248 before?

[110]

A. I think I did. I believe I saw that.

* * * * * * * *

[139]

* * * * * * * *

Q. Do you recall sending any documents to the Department of Justice?

A. I do not.

Q. Do you recall at any time, now having looked at 6846, going back to Mr. Turnbull after your November 28 letter and asking for any documents to send to the Department of Justice?

A. I do not recall anything like that.

Q. Or asking for any additional documents at all?

A. I do not recall anything like that.

Q. Do you know what documents are being referred to here in 6846?

A. No.

Q. Do you recall ever sending to the Department of Justice a copy of Document 239-240, which was the McCook

[140]

proposal?

A. I do not recall.

Q. How long have you been practicing law, Mr. Winton?

A. Twenty-four years.

* * * * * * * *

Q. Over that period, have you had communications with the Department of Justice at any time concerning any matters involving the Antitrust Division?

A. Not that I recall.

• • • • • • • •

h. DEPOSITION: MAY 6, 1976: JERROLD S. GROSS

United States District Court for the Central District of California

(Title omitted in printing)

• • • • • • • •

[3]

JERROLD GROSS,

having been duly sworn, was examined and testified as follows:

EXAMINATION

By Mr. Klitgaard:

Q. Would you please state your full name.

A. Jerrold Stanley Gross.

Q. What is your business address?

A. 2040 Avenue of the Stars, 4th Floor, Los Angeles 90067.

Q. What is your present occupation, sir?

A. I am a law clerk.

Q. For whom?

A. Howard L. Winton.

• • • • • • • •

Q. Are you appearing here today pursuant to subpoena duces tecum?

A. Yes, I am.

• • • • • • • •

[19]

• • • • • • • •

Q. Did Mr. Turnbull bring documents to the second meeting with Mr. Winton?

A. At some point prior to the letter, 430 to 433 [opinion letter dated November 28, 1969], at some point between the initial consultation with Mr. Winton and the date of this letter, Mr. Turnbull brought a substantial number of documents to the office.

• • • • • • • •

Q. When you say substantial number of documents, can you give us an estimate for example of how high the pile was?

A. As I best recall, it was in at least one, perhaps two cartons, you know, such as the grocery market—when you are going to move, you go get cartons to move. I believe it was one or two of those.

Q. By a carton, you are referring to a carton that would be roughly a foot to a foot and a half or two feet high?

A. Approximately, yes.

Q. And maybe 36 inches wide or long?

A. Twenty-four to 36 inches, approximately.

Q. Did you see the cartons when they were brought in or shortly after they were brought in?

A. Yes, I did.

• • • • • • • •

[20]

• • • • • • • •

Q. Did the documents come to the top of one carton, or do you recall?

A. My recollection is that the carton or cartons were more than half full, but I wouldn't say to the top nearly. Again, it required a carton to transport them. That is all that I can recall.

Q. Were there any file folders in the cartons in addition to just loose documents?

A. I believe so.

Q. When the documents were brought in by Mr. Turnbull, did you go to the documents, look through them?

A. Yes, I did go through them at some point.

Q. Did you put them in chronological order?

A. I believe I put them into separate categories, and then within each category I put them in chronological order.

• • • • • • •

[21]

• • • • • • •

Q. When you broke the documents down into categories of chronological order, did you then show the documents to Mr. Winton?

A. Yes, I believe I did and then discussed them.

Q. Did Mr. Winton ever look through the documents themselves, to your knowledge?

A. I don't recall if he went through them in their entirety. He may have read certain of the documents that I suggested that he should read.

[22]

Q. In other words, you don't recall Mr. Winton going through the documents one by one?

A. Oh, no, that was my function.

• • • • • • •

[23]

• • • • • • •

Q. Did Mr. Turnbull bring any additional documents after this first group of documents in the boxes that you referred to a moment ago?

A. • • •. My recollection is that at the first meeting with Mr. Winton he may have brought some documents, but as a result of the first meeting, I believe Mr. Winton requested him to bring further documents, and at the second meeting, he did so, or he then—I think Mr. Winton probably told him to bring everything that he had in his possession which was related to this

[24]

transaction or these events.

Q. Relating to the petroleum supply in American Samoa?

A. Right, correct.

• • • • • • •

[25]

• • • • • • •

Q. In the documents that Mr. Turnbull brought in, were there typewritten originals, as well as photocopies?

A. I believe there were some original documents, yes.

• • • • • • •

[26]

• • • • • • •

Q. How much time did you spend reviewing the documents that Mr. Turnbull brought in?

A. I would estimate that I spent about two to three, two to three days perhaps. It may be a little more. I mean, I may be enlarging it somewhat.

Q. Were those roughly two to three 8-hour days?

A. Yes.

• • • • • • •

[30]

• • • • • • •

Q. Did Mr. Winton return these documents to Mr. Turnbull more than a month or two after this letter of November?

A. My recollection is that it was a substantial period of time after the letter.

• • • • • • • •

[34]

• • • • • • • •

Q. Do you recall how long it was after the Government suit was filed that Mr. Turnbull first saw Mr. Winton?

A. I might be able to reconstruct it. It was very close to the time that the suit was filed by the Government. I am relying on the statement, the date given as to when the suit was filed in the letter of June 1973.

Q. The suit was filed in late September 1969.

A. That is correct.

Q. When you say very close, what do you mean by that?

A. Within a matter of a month and a half, a month to a month and a half.

• • • • • • • •

[35]

• • • • • • • •

Q. Did Mr. Turnbull or anyone else ever mention to you that the documents that had been delivered to your office were previously delivered to the Department of Justice and then returned by the Department of Justice in whole or in part?

A. Now that you state it, that sounds somewhat familiar. It may have been. In other words, I believe the Department of Justice may have reviewed Mr. Turnbull's documents in connection with preparing the suit by the Government, but I am not sure whether I am reconstructing that from

what you say or not, and it is logical. I believe it may well have been.

• • • • • • • •

Q. You have a general recollection?

A. Yes.

Q. That the Department of Justice had looked at some of the documents or all of them?

A. I believe so, yes.

• • • • • • • •

[45]

• • • • • • • •

Q. I would like to show you some documents that we obtained from the files of Sullivan, Jones & Archer which they received sometime in August of [1970] from Mr. Turnbull, • • •

• • • • • • • •

[48]

• • • • • • • •

Q. I show you Document 4693. Have you seen that document before?

A. I believe so. I believe that was one of the documents or a copy of one of the documents or another copy that was included among those that were brought by Mr. Turnbull to Mr. Winton's office.

Q. I show you Document 4695 [Tu 53]. Have you seen that document before?

A. I believe so, yes. I am quite sure I did see that.

• • • • • • • •

Q. Have you seen 4696 through 4698 [Tu 62-64]?

A. Yes, I believe—let me read it thoroughly, but I see something that—

Q. Rings a bell?

A. Yes. Yes, I am quite sure I saw that. • • •

[49]

• • • • • • • •

Q. I hand you Document 4701 and 4702. Have you seen that document before?

A. Yes, I believe this is one of the documents that was included in those boxes by Mr. Turnbull for Mr. Winton which I saw.

Q. Is that one of the documents that you selected out for Mr. Winton?

A. I believe I recall it, yes.

Q. You recall selecting it out?

A. Yes.

[50]

Q. I would like to show you Document 4703 and 4704 [Tu 79-80]. Have you seen that document before?

A. I believe I do recall this document, yes. I mean that I saw this document previously.

• • • • • • • •

[51]

• • • • • • • •

Q. Do you recall seeing 4705?

A. I believe so, but I am not certain. I don't have a very clear recollection of having seen it, but I may well have.

Q. Do you have a better recollection of having seen 4701 and 4702?

A. Yes, very definitely.

• • • • • • • •

Q. I would like to show you 4708-4709. Do you have

[52]

that document?

A. Yes.

Q. Is that one of the documents you have seen before?

A. I recall having seen that, yes.

• • • • • • • •

[53]

• • • • • • • •

Q. I would like to show you Document 4712-4713 [Tu 71-72]. Have you seen that document before?

A. Yes, yes.

Q. Is that one of the documents that you selected out for Mr. Winton?

A. I am quite sure it was.

• • • • • • • •

Q. Have you seen Document 4716-4717 and the

[54]

Attachment 4718 before?

A. Yes, yes. I recall the attachment. I recall the document.

Q. You recall 4716 and 4717?

A. Yes, yes.

Q. Is that package, namely, 4716 through 4718 one of the documents that you selected out for Mr. Winton?

A. I am quite sure it was.

Q. I would like to show you 4719 [Tu 76]. Do you have that in front of you?

A. Yes.

Q. Have you seen that document before?

A. I believe so. Yes, I believe I have seen this document, and it was included in the ones brought by Mr. Turnbull.

• • • • • • • •

Q. I hand you Document 4720-4722, which is a Dun & Bradstreet report, it appears, on Oceanic Petroleum

[55]

Corporation. Have you seen that document before?

A. I believe I did, yes.

Q. Is that one of the documents that you delivered to Mr. Winton?

A. Yes, my best recollection is that I did see that at the time we discussed it.

Q. Is this one of the documents you selected out for Mr. Winton?

A. I believe so. I recall the description of the personnel of Oceanic Corporation.

• • • • • • • •

Q. I would like to hand you document 4727 [Tu 4]. Have you seen a copy of that document before?

A. Yes, I did. That part I remember.

Q. Are you referring to the penultimate paragraph about Chief Pele getting loaded?

A. Yes.

• • • • • • • •

Q. I would like to hand you Document 4730. Have you

[56]

seen that document?

A. I believe I did.

Q. Is that your best recollection?

A. Yes, my best recollection is that I did, but what rings a bell is the phrase "All proposals favorable."

• • • • • • • •

[57]

• • • • • • • •

Q. I am showing you 4736 [Tu 11]. Have you seen that document before?

A. Yes, I recall seeing that.

• • • • • • • •

[58]

• • • • • • • •

Q. I show you Document 4737-4738 [Tu 12-13]. Do you have some recollection of having seen this document before?

A. I believe I did. What seems to be familiar is the reference to Governor Lee's trip to Japan.

• • • • • • • •

Q. I would like to show you 4739. Do you have that document in front of you?

A. I do.

Q. Have you seen this document before?

A. I believe I did, yes.

• • • • • • • •

Q. I show you 4741 and 4743 [Tu 16-17].

[59]

A. I believe I saw this.

Q. Referring to 4741?

A. Correct.

• • • • • • • •

Q. I show you Document 4742, which is a single-page letter. Do you have that in front of you?

A. Yes, I do.

Q. Have you seen this particular document before?

A. Yes, I believe I saw this.

Q. Is that one of the documents you selected out?

A. I believe so.

Q. Is that your best recollection?

A. Yes.

• • • • • • • •

[62]

• • • • • • • •

Q. • • • [L]ooking at 4745, do you have a recollection of seeing that document?

A. I believe I did.

Q. I will show you 4756. Do you have a recollection of seeing that document?

A. Yes, I believe I saw this, and it was one of the documents I reviewed which was brought to Mr. Winton by Mr. Turnbull.

• • • • • • • •

Q. I am showing you Document 4759 and 4758. 4759 is a letter dated July 12 and 4758 is a letter dated

[63]

August 5. Will you look at both of those documents and then I will come back and ask you questions about each one separately. You might start out with 4759.

• • • • • • • •

A. I believe I recall these, both of these documents.

• • • • • • • •

Q. Do you recall seeing 4758?

A. Yes.

• • • • • • • •

[64]

Q. I would like to hand you now Documents 4762 and 4760 and an envelope which is marked 4761. You will see that 4762 is an earlier document and I will ask you to review those three documents.

• • • • • • • •

Do you recall seeing 4762 before?

A. I believe I do, yes.

• • • • • • • •

Q. Do you recall seeing 4760 before?

A. I believe so.

Q. How about the envelope?

A. I don't recall seeing the envelope.

Q. That is 4761, referring to the envelope?

A. I do not recall ever seeing that before.

Q. You do have a recollection of seeing 4760 and 4762?

A. My best recollection is that I did.

• • • • • • • •

Q. I show you 4765. Have you seen that document before?

[65]

A. Yes, I believe I did see that. I don't know whether it was the original or a copy of the cable.

Q. Have you seen Document 4764 before?

A. I believe I do recall seeing this, and I am referring to 4764.

• • • • • • • •

Q. Looking at page 306, do you see that is a letter from Chicago Bridge & Iron Works?

[66]

• • • • • • • •

• • • [D]o you have any recollection of having seen a document similar to this Chicago Bridge & Iron letter?

A. Yes, I am very certain. Regarding the furnishing, manufacture of storage tanks.

• • • • • • • •

Q. Did you see the letter from Chicago Bridge & Iron as well as the specifications?

A. You are referring to 306? I am quite sure I did.

Q. You are quite sure you did?

[67]

MR. PALMIERI: Did see what? The letter? • • •

THE WITNESS: The letter, yes, copy of the letter.

• • • • • • • •

Q. I would like to show you a letter that has been marked 224, and also a letter marked 225 which appears to be a photocopy of the same document.

A. I believe I saw that, yes.

Q. Referring to 224?

A. Correct.

Q. You will see that 225 appears to be a somewhat better photocopy. Would you read through 225?

A. (The witness complied.)

Q. Do you recall seeing Document 225?

A. I believe I did.

• • • • • • • •

[68]

• • • • • • • •

Q. I am showing you document 226. Have you seen that document before?

A. I believe so. This refreshes my recollection about Mr. Shaw being away from his office, just an interim bulletin.

Q. I am asking if you recall.

A. Yes, I believe so.

• • • • • • • •

Q. I would like to show you Document 227. Have you seen that document before?

A. I believe I did.

• • • • • • • •

Q. Directing your attention to Document 229, have you seen that document before?

A. I believe I did, yes.

• • • • • • • •

[70]

• • • • • • • •

Q. I am handing you Document 237 and 238. Do you have that document in front of you?

A. Yes, I do.

Q. Have you seen this document before?

A. I believe I did see this. This appears to be a draft of a letter which was subsequently revised, and I think this refreshes my recollection. I believe I did see this.

• • • • • • • •

[71]

• • • • • • • •

Q. I would like to show you Document 246. Have you seen that document?

A. I really can't say. The problem I am faced with is all the substance of this letter, for example, is very familiar to me. I don't know whether I saw this particular letter.

Q. Is the substance of the letter familiar to you?

A. I may be working backwards, but it appears to me to be at this point.

• • • • • • • •

Q. Do you recall selecting this document out for Mr. Winton?

A. I have no recollection of that.

• • • • • • • •

Q. I am showing you Document 247.

A. I believe I saw this.

• • • • • • • •

Q. I show you Document 248 [Tu 51]. Have you seen that document before?

A. I recall, I am quite sure I saw this, yes.

Q. Is that one of the documents you selected out

[72]

for Mr. Winton?

A. I believe so.

• • • • • • • •

[73]

• • • • • • • •

Q. I have in front of me a set of documents that run from 92 to 329. Were the documents in the box a larger stack than this? Did the box contain more documents than this pile we are looking at?

A. My recollection is it was a larger stack of documents or a greater number of documents than what you are pointing to.

Q. How much greater would it have been, twice as much?

A. I would estimate at least twice as much.

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[75]

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MR. KLITGAARD: We will take a recess now until 1:00 o'clock P.M.

(Whereupon, at 12:10 P.M., a recess was taken to 1:00 o'clock P.M.)

[76]

(Whereupon, at 1:15 P.M., Thursday, May 6, 1976, the taking of the deposition of JERROLD GROSS was resumed at the same place, the same persons being present.)

JERROLD GROSS,

having been previously duly sworn, testified further as follows:

EXAMINATION (Resumed)

BY MR. KLITGAARD:

Q. Did you have any conversations with Mr. Palmieri during the noon hour?

A. Yes, I did.

Q. Where did the conversations occur?

A. We had lunch at the Holiday Inn. I believe it is across the street.

Q. Was anyone else present?

A. No.

Q. Who paid for the lunch?

A. Mr. Palmieri.

Q. He bought your lunch?

A. Yes.

Q. What was discussed in the conversation with Mr. Palmieri?

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[77]

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We discussed my background and legal training and a number of other matters. With respect to this matter, he asked me to clarify what I meant when I was stating with regard to one of the exhibits that I recalled the subject matter of the document, and you know, in the case where I said I didn't know, I had no recollection whether I had seen that particular document, but I did—the subject matter was familiar to me, and he said what did I mean by "familiar to me."

My answer, which was the answer I would give you, of course, is that it was related to the proposal to supply petroleum products in American Samoa.

MR. KLITGAARD: Q Did Mr. Palmieri show you the document?

A. Yes.

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[78]

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Q. Did Mr. Palmieri bring documents with him to the lunch?

A. Yes.

Q. Did he show you those documents during the noon hour?

A. He showed me one, one or two.

• • • • • • • •

They were both documents which you had previously shown me.

• • • • • • • •

Q. Did he tell you why he was asking you questions during the lunch hour instead of on cross-examination on

[79]

the record?

A. No, he didn't explain it.

• • • • • • • •

Q. Did Mr. Palmieri select out the documents he wanted to ask you about during the lunch hour? Did he pick them out of the folder and hand them to you?

A. Yes.

• • • • • • • •

Q. I have shown you a number of documents. Did he tell you why he selected those two documents?

A. No. The only thing he referred to was my answers with respect to a number of documents where I did not recall—I don't have any recollection whether I saw this particular document, but the subject matter that is contained in the document is familiar to me, and he asked me what I meant, to define what I meant by saying the subject matter, that I recall the subject matter. What did I mean by that.

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[81]

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Q. Did Mr. Palmieri discuss with you how documents were produced in this present case?

A. How they were produced?

Q. Yes. In other words, in terms of some produced from the files of Mr. McCook and some from Mr. Turnbull?

A. No, with the possible exception of what he stated when you during the morning session first showed me these two documents.

Q. 246 and 247?

A. Right. I believe at that time he stated that those were from the McCook file or something to that effect.

Q. Did he repeat that again at noontime?

A. Only to the same extent that he stated on the record this morning.

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[82]

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Q. I would like to show you 246, which is a letter dated October 5, 1965.

A. Yes.

Q. Do you recall earlier in your testimony that you were familiar with the subject matter of this document?

A. I believe, and my recollection of this morning's session and my testimony with regard to this document No. 246 was that I did not have a recollection one way or the other that I had seen this particular document, but I was familiar with the subject matter. I believe I stated the same by the way with regard to this other document No. 247.

Q. I believe your testimony is wrong in regard to 247. We will come back in just a minute—

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[83]

MR. PALMIERI: Wait a minute. You made a statement, and you are assuming facts that are not in evidence. That is not what he stated.

MR. KLITGAARD: I think the record will speak for itself, Mr. Palmieri on that, and the record will show that the witness testified as to 247 that he believed he had seen that document before; that it was his best recollection that he had seen that document before.

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[84]

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Q. Let's come back to 246. Do you have that in front of you?

A. Yes.

Q. Did you discuss with Mr. Palmieri the subject matter of this document, the matters set forth therein?

A. No, not in specifics, just with regard to this question to me was when I made the statement, and I would like to repeat myself with regard to that statement. I made that statement in regard to a lot of other documents as well, because as I said, a lot of this is very familiar to me. I don't know that I saw that particular document. Chances are that in many cases I did, but I have no way of connecting the subject matter.

Q. Is this position something that Mr. Palmieri discussed with you during the noon hour?

A. I believe I so testified this morning that I made the statement I believed on more than one occasion that I could not say this particular document—my recollection in some cases was very specific that I recalled. Many of them I said I don't recall that I saw that particular

[85]

document. I do recall having seen in some—maybe in another document or the document I was being questioned about, the information that was contained in that with respect to these two documents.

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[86]

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Q. Recalling the documents that you saw in the box or among the papers that Mr. Turnbull delivered to Mr. Winton, did you see more than one letter from Mr. McCook to Governor Lee?

A. I don't recall seeing a letter. I mean, I have no specific recollection of a letter from Mr. McCook. I may well have seen it, but I can't say I saw a letter from Mr. McCook. Most of the correspondence that I saw was either to or from Mr. Turnbull.

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[89]

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Q. Do you recall in the documents that you reviewed a response by Governor Lee in writing?

A. I believe you asked me that question with regard to this document.

Q. By this document—

A. I am referring to 247, and I believe my testimony was that I have no—I either did not recall it or I had no recollection either way.

Q. I tell you now that you are changing your testimony.

[90]

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MR. KLITGAARD: Let's have the record read back.

• • • • • • • •

Let the record show that we are reading back to the witness the following testimony that he gave before lunch. Will you read back that portion of the record concerning Documents 246 and 247?

(The record was read from line 3 through line 24, page 71, by the reporter.)

MR. KLITGAARD: Q You have just heard your testimony, Mr. Gross, where you testified you believed you saw Document 247.

A. Yes, I just heard that.

Q. Do you want to change that testimony now?

[91]

A. I would, yes. I do not have a recollection again, repeating myself, I may have seen it, but I have no recollection of having seen it.

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[97]

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Q. In any of those documents that you reviewed which were supplied by Mr. Turnbull, were any of those documents totally unrelated to the supply of petroleum products in American Samoa?

A. Totally unrelated?

Q. Right.

A. I can't say for sure, but I don't believe any of them were totally unrelated. It is possible.

Q. You don't have any present recollection of anything being totally unrelated?

A. There could have been some that I just pushed aside. I just don't recall.

Q. You don't recall any that were totally unrelated?

A. No.

Q. Did Mr. Winton to your knowledge ask Mr. Turnbull to bring in all of his documents relating to petroleum supply in American Samoa?

[98]

A. I believe he did, yes. Yes, that is what he consulted him for.

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[108]

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Q. • • • [I]t is your testimony you have no recollection of seeing 129-130?

A. I have no recollection.

Q. I would like to hand you document 131 [TU 31]. Have you seen that document before?

A. That appears familiar to me. I believe I did, yes. A couple of items in there are rather striking to me.

Q. What items are those?

A. The request for clarification as to Unoco, whether Unoco is making a firm commitment or holding off until they get word that it might be worked out and also wanting to check with Washington before making any decisions. That may have been a refrain. Generally the whole content of the letter is familiar to me.

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[109]

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Q. I would like to hand you 135. Have you seen that document before?

A. I believe that I did see this, yes.

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[113]

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Q. I will hand you now Document 160-161 [TU 44-45]. Have you seen that document before, Mr. Gross?

A. I believe I did. I recall the reference to Tommy Corcoran.

Q. That is the reference in the second paragraph on the first page of the document?

A. Yes.

Q. I am handing you Document 162-163 [TU 46-47].

A. Yes, I believe I recall seeing this.

Q. You recall seeing this document?

A. Yes, 162-163.

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Q. Have you seen 165 before?

A. Yes, I believe I did.

Q. You say you are giving me your best recollection?

A. My best recollection is that I saw that Document 165.

Q. I am handing you Document 166 [TU 58]. Have you seen that before today?

A. My recollection is that I saw this document, yes.

[114]

Q. I am handing you 167 [TU 59]. Have you seen that before?

A. My recollection is that I saw this Document 167.

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Q. I will hand you 172 [TU 60]. Have you seen that document

[115]

before today?

A. My best recollection is that I did. I believe that the statement that ships normally fuel at Suva but will fuel in Pago is quite familiar to me.

Q. Have you seen Document 176 [TU 50] before today?

A. I believe I did.

Q. Again, that is your best recollection?

A. Yes, it is.

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[119]

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Q. I am handing you Document 188. Have you seen that document before?

A. My best recollection is that I did.

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[120]

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Q. I am handing you Documents now 192-212, which is a Chicago Bridge & Iron letter to Pacific Coconut Processing Company and various specifications. Will you look through these documents? • • •

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[121]

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A. My best recollection is that I did see the letter dated November 30, 1964, which is among the Documents 204-206. I have no recollection with regard to the specifications attached to it. I believe these sheets which are in a graph or a chart form of specification—I don't recall seeing the written specifications.

• • • • • • • •

• • • [M]y best recollection is that I saw the cover letter, Documents 204-206.

• • • • • • • •

Q. I would like to show you Document 213-214 [TU 67-68] and ask if you have seen that document before?

A. My recollection is that I saw this document, which is a letter consisting of Documents Nos. 213 and 214.

[124]

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Q. I show you Document 244 and 245. Have you seen that document before today?

A. My best recollection is that I did see this document or a copy of it. • • •

Q. I show you Document 248 [TU 51]. Have you seen that document before today?

[125]

A. My best recollection is that I did see this document.

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[146]

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Q. I would like to show you a letter dated November

[147]

3, 1969, which has been marked 6844-6845 from Mr. Hollander at the Department of Justice to Mr. Turnbull. Will you read through that letter, please?

A. Yes.

Q. Have you seen a copy of this letter before today?

A. I believe I may have. I am not really certain, but my best recollection is I may have seen that.

Q. Do you recall where you saw it?

A. It would have been shown to Mr. Winton and myself by Mr. Turnbull.

Q. Was it with the box of documents that Mr. Turnbull brought over to you?

A. That I don't recall. I don't know whether it was included in all the documents or he showed it to us separately. It did not relate, you know, to the substance of the proposal to supply petroleum products. It is just a trans-

mittal of documents we were interested in reviewing to evaluate the action.

In other words, it may have been separately shown to us if we saw it, or it may have been on the top of the box. It appears to reflect the files and documents that Mr. Turnbull brought in for Mr. Winton to review.

Q. You have some general recollection then of seeing 6844 or 6845 prior to today?

A. Yes, my best recollection is I believe I saw it.

Q. You will see here that in 6844 there is a reference to a delivery of documents by Mr. Turnbull on October 29, 1969 to Mr. Hollander.

[148]

A. Correct.

Q. And then you will see on the second page there is a receipt acknowledged by Mr. Turnbull as having obtained these documents on November 18, 1969.

A. I see that, yes.

Q. Your letter to Mr. Turnbull was dated November 28, 1969, ten days after the receipt was signed. Did Mr. Turnbull bring in the box of documents to you within the ten days of that November 28, 1969 letter?

A. I don't have a specific recollection. I would infer from this letter that he did. It was subsequent to his receipt, because I do recall—I believe I so stated before—that some of the documents were brought in files.

Q. In files?

A. Yes, a file of correspondence. I believe that was—well, that may have been part of what he brought in. I am inferring that from this date. I don't have a recollection of a particular time sequence. It may well be that Mr. Turnbull first contacted Mr. Winton before he received this back.

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[168]

Q. I wanted the record to show your background, Mr. Gross. Earlier you indicated that you were a law clerk in the office of Mr. Winton; isn't that correct?

A. That is correct.

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Q. You went to college?

A. Yes, I went to UCLA and I had about a semester to complete and decided I didn't want to teach French. I then left and went into construction.

Q. And you were in construction for a number of years?

A. Right. • • •

Q. In about 1960 or 1961 did you first have contact with Mr. Winton in connection with a lawsuit involving your

[169]

contracting business?

A. Yes, 1960, I believe.

Q. And sometime thereafter you began working with Mr. Winton?

A. That is correct.

• • • • • • • •

Q. • • • [Have] you participated in the drafting of pleadings?

A. Yes.

Q. And in briefs in various courts?

A. Yes.

Q. And in preparation of various cases for trial?

A. Yes.

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[170]

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Q. And you have studied independently on your own various subjects of the law such as pleadings perhaps and contracts and other matters in connection with preparing to be a lawyer?

A. Yes, and under Mr. Winton's supervision.

Q. Are you still studying at this time to become a lawyer?

A. Yes.

• • • • • • • •

Q. Right now you are a man in your early 50's, I take it?

A. Just turned 50.

Q. Have you had occasion in working for Mr. Winton to review documents in other cases?

A. Yes.

Q. Have you done that on more than one occasion?

A. • • • The first, I believe, the very first matter that Mr. Winton asked me to • • • work with him on required the review of a really substantial number of documents, about two filing cabinets for examination. • • • I reviewed all the documents and made memoranda respecting them to a great

[171]

extent in that case.

Q. In other cases besides that case you just talked about where there were filing cabinets full of documents, have you inspected large numbers of documents?

A. Yes, I am sure I have. That one stands out in my mind. I am talking about two filing cabinets full. It was quite a chore.

Q. In reviewing documents in various cases, have you received instructions from Mr. Winton as to generally what you were going to look for?

A. Oh, yes.

Q. Do you more or less look in the files on your own without instruction?

A. No, at Mr. Winton's instructions. He would give me a description of what the nature of the case was as he understood it from a potential client or a client, and with that in mind, I would then review the documents to locate or segregate those that were material from what was not.

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I. AFFIDAVIT: FEBRUARY 19, 1976: BERNARD M. HOLLANDER

United States District Court for the
Central District of California

(Title omitted in printing)

AFFIDAVIT OF BERNARD M. HOLLANDER

DISTRICT OF COLUMBIA—ss:

BERNARD M. HOLLANDER, being first duly sworn, deposes and says:

1. Affiant is a member of the bars of the District of Columbia, the United States District Court for the District of Columbia, the United States Court of Appeals for the District of Columbia Circuit and the United States Supreme Court, and has been admitted to practice before the Central District of California in several antitrust actions, three of which are now pending before Judge Robert L. Kelleher. Affiant was the Government's trial counsel in *United States v. Standard Oil of California,* 362 F.Supp. 1331, (N.D. Cal. 1972), *affirmed,* 412 U.S. 924 (1973) (Government case), and is presently representing the United States in continuing post judgment proceedings before Judge Samuel Conti in the Government case. Affiant is also Chief of the Judgments and Judgment Enforcement Section, Antitrust Division, United States Department of Justice.

2. This Affidavit is filed in support of a motion for a protective order that notices of deposition be vacated and discovery not be had pursuant to subpoenas *duces tecum* served upon affiant and upon the Department of Justice by Standard Oil Company of California ("Standard") on February 6, 1976. These subpoenas seek deposition testimony and document production in this private treble damage action on February 24 and 25, 1976, in Washington, D.C. Copies of the notices of deposition and the subpoenas are attached hereto as Exhibits 1(a)-(d).

3. A letter (Exhibit 2) signed by Thomas J. Klitgaard, Standard's trial counsel in this private case, and a packet of documents to be reviewed prior to affiant's deposition, accompanied my subpoena. The letter stated that Standard believes it necessary to depose affiant in this private case because certain documents produced by Raymond C. Turnbull during the discovery phase of this private case were not produced by Mr. Turnbull in the Government case. According to the letter, Mr. Turnbull stated when deposed in the current case that a number of documents not produced in the Government case had been made available to the Government in October 1969, that these documents were returned by the Government to Mr. Turnbull by mail without a covering letter[1] and that when Standard subsequently subpoenaed documents from Mr. Turnbull in the Government case, he neglected to look through the documents returned to him by the Government. Thus Standard reasons:

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1. Mr. Turnbull's recollection of the circumstances under which his documents were returned by the Government is apparently mistaken (See Par. 5 *infra;* Exhibit 4).

> Because Mr. McCook is relying, in part on the *prima facie* effect of the judgment in the prior case as the basis for his suit against Standard, I am sure that you will appreciate that in view of the testimony of Mr. Turnbull in the discovery proceedings in the present suit concerning the additional documents, it has become necessary for us to take your deposition in the pending suit pursuant to subpoena *duces tecum,* and also to serve a separate subpoena *duces tecum* upon the Department of Justice. (Exhibit 2, p. 1)

4. Standard exhaustively investigated the adequacy of Mr. Turnbull's document production in the Government case during several depositions, including those of Mr. Turnbull and his counsel, Richard B. Lynn. As described in Standard counsel's letter (Exhibit 2), it abandoned this line of inquiry only after several assurances by Mr. Lynn to both Standard and the Government that all documents had been produced and affiant's written assurances to Standard's counsel on May 13, 1971, that "we recall no documents provided to the Government by Mr. Turnbull which were not marked with TU identification returned to Mr. Turnbull and provided for your use" (Exhibit 3). Today, almost five years after making that representation to Standard, affiant still recalls no documents supplied to the Government by Mr. Turnbull during the Government case other than those produced to Standard and is in no position to explain why Mr. Turnbull has now come forward with additional documents.

5. Upon information and belief, the chronology of events regarding the production of Mr. Turnbull's documents in the Government case was as follows. After the Government complaint against Standard was filed on September 30, 1969, in the Northern District of California, affiant, on October 6, 1969, received a telephone call from

Raymond C. Turnbull. A meeting was arranged to take place at Mr. Turnbull's place of business, Seaways International Engineering Corporation, Beverly Hills, California, on October 29, 1969. At the meeting, Mr. Turnbull made the following files available to the Government for copying in Washington, D.C. upon condition that they be promptly returned to him:

1. File of correspondence entitled, "Union Bulk Plant —Samoa";
2. File of correspondence entitled, "Summit Industrial Corporation—Correspondence";
3. File of correspondence entitled, "Correspondence Governor Lee 1962-1965".

On November 3, 1969, affiant returned these files to Mr. Turnbull by certified air mail with a covering letter requesting Mr. Turnbull to acknowledge their receipt. A copy of that letter bearing Mr. Turnbull's acknowledgment is attached as Exhibit 4. The Turnbull documents which had been photocopied by the Government were designated TU-1 to TU-100.

6. On October 23, 1969, Standard filed and served upon the Government a Motion For Production of Documents pursuant to Rule 34 of the Federal Rules of Civil Proceduce. By agreement of the parties, the Government made available to Standard the non-privileged documents called for by Standard. In addition, the Government's responses to Standard's Requests for Admissions and Interrogatories included extensive factual information and documentation.

7. On April 7, 1970, affiant telephoned Mr. Turnbull and obtained his consent to produce to Standard copies of the Turnbull documents in the Government's possession, *i.e.,* TU-1 to TU-100. On April 13, 1970, affiant transmitted

copies of TU-1 to TU-100 to William E. Mussman, Esquire, trial counsel for Standard in the Government case (Exhibit 5). During pretrial discovery in the Government case, and particularly during its depositions of Mr. Turnbull and his attorney, Richard B. Lynn, Standard repeatedly sought to determine whether there were documents other than TU-1 to TU-100 in Mr. Turnbull's files. Standard, in January, 1971, noticed additional depositions of Messrs. Turnbull and Lynn but cancelled them after receiving Lynn's report that the documents previously marked TU-1 to TU-100 constituted the totality of the Turnbull file (Exhibit 2, p. 2).

8. On April 15, 1971, Standard once again noticed the depositions of Messrs. Lynn and Turnbull (Exhibit 6). On April 16, 1971, Mr. Klitgaard wired affiant that:

> Lynn advises after further conference with Massrs. [sic] McCook and Turnbull they have no further documents responsive to our subpoenas. Lynn also advises that Turnbull turned over his entire file to you from which you extracted documents numbered TU-001—TU-100. Do you have missing documents in your possession? Please advise at once. (Exhibit 7)

Standard, after further discussion with Mr. Lynn, then cancelled the Turnbull and Lynn depositions (Exhibit 8). On April 19, affiant notified Mr. Mussman the Government had provided Standard with all Turnbull documents in the Government's possession, TU-1 to TU-100. [Compare handwritten notes on Exhibit 7 with Exhibit 9].

9. On April 19, 1971, Mr. Mussman wrote affiant explaining the reasons for the events set out in Paragraph 8. He wrote:

> Our telegraphic request was to find out if there were to your knowledge any documents produced from the Turnbull-McCook files for your inspection which you did not copy and produce for us because you believed that they were irrelevant or immaterial to the issues in the case. Because Mr. Lynn told Mr. Klitgaard that he was going to advise you immediately of their conversation, Mr. Klitgaard thought that there would be no chance of your misinterpreting his telegrams. There was no intent to suggest that the Government might be withholding documents; the inquiry was designed to find out if you would stipulate to a production of documents (if any) which you saw or received from Turnbull-McCook and which you did not include in the set numbered "TU-001—TU-100." (Exhibit 9, p.4)

On April 23, 1971, affiant wrote to Mr. Mussman setting forth the Government's understanding that Mr. Lynn had "again searched the relevant files and found no additional responsive documents . . ." (Exhibit 10). On April 26, 1971, Mr. Mussman informed affiant by letter (Exhibit 11) that he had received a telegram from Mr. Lynn which stated:

> Ref Marketing Petroleum American Samoa. Please be advised Messrs. Turnbull and McCook files examined week ending April 17, 1971. You have my assurance that there are no further documents. This assurance is unequivocal and is in no manner dependent upon my independent judgment respecting relevance.

On May 3, 1971, affiant confirmed receipt of Mr. Mussman's April 26, 1971 letter, noting that in light of Mr. Lynn's assurance to Standard there did not appear to be any sound basis for pursuing the matter further (Exhibit 12). On May 5, 1971, Mr. Mussman wrote still another letter (Exhibit 13) requesting the Government's further assurance that no Turnbull or McCook documents other than TU-1 to TU-100 had been received or reviewed (Exhibit 9, p. 5). On May 13, 1971, affiant replied, as stated in

Paragraph 4 *supra,* that the Government could recall no documents provided to the Government by Mr. Turnbull which had not been marked with a TU identification, returned to Mr. Turnbull and provided to Standard (Exhibit 3). On May 18, 1971, affiant received another letter from Mr. Mussman, in which he stated that Standard would not pursue the matter of additional Turnbull documents further (Exhibit 14).

10. On July 20, 1973, following affirmance by the United States Supreme Court of the District Court's decision and Judgment in the Government case, affiant, in the course of returning copies of documents to third parties, sent Mr. Turnbull copies of TU-1 to TU-100 on the assumption that these copies might be of some use to him. As on November 3, 1969 (Exhibit 4), Mr. Turnbull was requested to acknowledge receipt of the documents, which he did (Exhibit 15).

11. As the preceding paragraphs make clear, the only Turnbull documents which affiant can recall receiving prior to the termination of the trial in the Government case are those designated TU-1 to TU-100. Furthermore, it is affiant's information and belief that the Government produced to Standard in the Government case copies of those non-privileged documents in its possession, custody and control which were responsive to Standard's demands at that time.

12. Upon receipt of the current Standard subpoenas, affiant reviewed and caused to be reviewed those Department of Justice and staff files which should contain the documents responsive thereto. As a result of that review, the Department of Justice is voluntarily producing as Appendix A to this Affidavit copies of those responsive non-privileged documents not previously sought by or provided

to Standard and certain responsive handwritten notes as to which the Government will not assert any privilege. These include the following categories of documents:

a. Letters and notes of telephone communications prior to the termination of the Government case between the Government and any of the persons designated in the subpoenas;

b. Letters generated in connection with post-judgment proceedings in the Government case;

c. Other documents relating to post-judgment proceedings in the Government case where the Government's records are unclear as to whether Standard has already been supplied with copies;

d. Letters of transmittal relating to the *McCook* case.

BERNARD M. HOLLANDER
Bernard M. Hollander

Subscribed and sworn before me
this 19th day of February, 1976.

(Remainder of jurat
omitted in printing)

j. AFFIDAVIT: MARCH 10, 1976: BERNARD M. HOLLANDER

United States District Court for the
Central District of California

(Title omitted in printing)

SUPPLEMENTAL AFFIDAVIT OF
BERNARD M. HOLLANDER

DISTRICT OF COLUMBIA) ss:

BERNARD M. HOLLANDER, being first duly sworn, deposes and says:

1. This Supplemental Affidavit is filed in support of a motion for a protective order that notices of deposition be vacated and the discovery not had pursuant to subpoenas *duces tecum* served upon affiant and upon the Department of Justice by Standard Oil Company of California ("Standard") on February 6, 1976. These subpoenas seek deposition testimony and document production by the Department of Justice and affiant in this private treble damage action. The depositions have been continued pending a final determination of this motion.

2. A packet of documents to be reviewed prior to affiant's deposition accompanied my subpoena. Those documents were divided into three categories by Standard:

> "(a) Documents Not Produced in *Government* Case for Standard: Entirely new documents from files of Messrs. Turnbull, McCook, Lynn;"
>
> "(b) Documents Not Produced in *Government* Case for Standard, but Now Produced by Messrs. Turnbull, McCook, Lynn: Different versions, with different notations, et cetera, of documents produced for Standard in *Government* Case as TU-1 to TU-100;"
>
> "(c) Documents Not Produced in *Government* Case for Standard, but Now Produced by Messrs. Turnbull, McCook, Lynn: Different versions, with different notations, et cetera, of documents produced for Standard in *Government* case from files of third parties."

3. As stated in affiant's affidavit dated February 19, 1976, the only Turnbull documents which affiant can recall receiving prior to the termination of the trial in the Government case are those designated TU-1 to TU-100 [Par. 11]. Affiant is in no position to explain why Mr. Turnbull has now come forward with additional documents. Furthermore, to the best of affiant's recollection and belief, Messrs. McCook and Lynn produced no documents to the

Government prior to the termination of the trial in the Government case.

4. Although affiant had occasion to examine thousands of documents in the course of the Government case and has not gone back and reviewed each such document, affiant has reviewed the documents provided by Standard, as Standard's counsel requested. It is affiant's recollection and belief that:

> (a) As to the documents in Standard's category (a), except for the Samoan News Bulletin of October 1, 1969, he does not recall seeing any of the documents in that category in the documents produced prior to the termination of the trial in the Government case. It is affiant's further belief that he would have photocopied the documents in this category had they been made available to affiant by Mr. Turnbull on October 29, 1969.
>
> (b) As to the documents in Standard's category (b), while affiant believes that he has seen copies of these documents prior to the termination of the trial in the Government case, he has no recollection of whether he has ever seen these specific versions of these documents. It is affiant's further belief that he would have photocopied the documents in this category had they been made available to affiant by Mr. Turnbull on October 29, 1969.
>
> (c) As to the documents in Standard's category (c), while affiant believes that he has seen copies of these documents prior to the termination of the trial in the Government case, he has no recollection of whether he has ever seen these specific versions of these documents. It is affiant's further belief that he would have photocopied the documents in this category had they

been made available to affiant by Mr. Turnbull on October 29, 1969.

5. Affiant has reviewed the affidavit of Thomas J. Klitgaard, dated March 5, 1976, filed with Standard's Memorandum in Opposition to Motion by the United States Department of Justice and Bernard M. Hollander, Esq. For A Protective Order. Paragraphs 13 and 14 of Mr. Klitgaard's Affidavit set out questions which, among others, Standard would seek to pose to affiant at his deposition. Affiant's answers to those questions in Paragraph 13 are as follows:

(a) *What did Mr. Turnbull say, and do, in connection with the delivery of documents to the Department of Justice in October, 1969?*

Answer: While affiant is unable to remember the specific details of what Mr. Turnbull said and did in October 1969, it is his general recollection and belief that Mr. Turnbull telephoned affiant on October 6, 1969, as described in Paragraph 5 of affiant's previous affidavit. Affiant has further discovered, since the preparation of that first affidavit, that a second telephone call between affiant and Mr. Turnbull apparently took place on October 22, 1969. During the course of these two conversations, affiant believes that Mr. Turnbull must have been requested to collect his files bearing on the subject matter of the Government case for the meeting of October 29, 1969.

At affiant's brief meeting with Mr. Turnbull on October 29, 1969,[1] it is affiant's recollection that Mr. Turnbull made

1. It is affiant's information and belief that Mr. Turnbull testified at his deposition in this private case that the meeting with affiant lasted about half an hour. [Turnbull Dep. 11/25/75, at 359]. This accords with affiant's recollection.

available three files, the files referred to in affiant's letter to Mr. Turnbull dated November 3, 1969 [Hollander Affidavit, Par. 5; Exhibit 4]. That recollection is further reinforced by the discovery of a handwritten copy of a receipt given to Mr. Turnbull by affiant on October 29, 1969, attached hereto as Exhibit 1.

In addition, Mr. Turnbull mentioned at that meeting that William R. McCook, of whom affiant believes he had never previously heard, had a file with a proposal for Governor Lee on putting in a bulk petroleum plant in American Samoa. It is affiant's recollection and belief that Mr. Turnbull said that his counsel, Howard L. Winton, would send a copy of the proposal to affiant [See Appendix to Hollander Affidavit, A-1, 2].[2]

2. Inadvertently, affiant's notes of this meeting were incorrectly characterized as notes of a telephone communication in the Appendix to affiant's previous Affidavit. [Hereafter "Hollander Affidavit"].

It is affiant's further recollection and belief that affiant took with him only the three files referred to above. Had any "loose" documents in addition to the three files, or any additional files of documents been given to affiant, they too would have been listed in the receipt (Exhibit 1 attached hereto) and in the return letter (Exhibit 4 to Hollander Affidavit).

(b) *In discussions with Mr. Hollander in October, 1969, did Mr. Turnbull say that he had collected any documents from Mr. McCook, or from Mr. Lynn?*

Answer: No, to the best of affiant's recollection and belief.

(c) *What did Mr. Hollander ask Mr. Turnbull to do in connection with collecting documents?*

Answer: See answer to paragraph (a) herein.

(d) *In receiving the files from Mr. Turnbull in 1969, did*

Mr. Hollander photocopy all the documents in the files and return them to Mr. Turnbull?

Answer: It is affiant's recollection and belief that he did not receive any documents other than those in the three Turnbull files, as set out in Paragraph 5 of affiant's first affidavit. Further, while affiant has no specific recollection, he believes that all the documents in those three files were photocopied and the originals returned to Mr. Turnbull on November 3, 1969. Copies of all the documents photocopied were subsequently designated as TU-1 to TU-100 and copie provided to Standard on April 13, 1970.

(e) *Was Mr. Hollander given any loose documents by Mr. Turnbull, apart from documents in files?*

Answer: No, to the best of affiant's recollection and belief. See affiant's answer to (a) above.

(f) *Were any documents returned to Messrs. Turnbull McCook, Lynn, or any attorneys for these individuals, without a covering letter, after October, 1969? What records are there in the Department of Justice which would provide an answer?*

Answer: No, to the best of affiant's recollection and belief. Further, it is affiant's information and belief that the Department of Justice has no records which would show the transmittal of documents to these individuals without a covering letter.

(g) *Were there any discussions about production of documents in the Government case with Messrs. Lynn, McCook at the meeting after the Lynn-McCook depositions on March 23, 1971?*

Answer: Affiant has no recollection of any meeting with Messrs. McCook and Lynn after the Lynn-McCook depositions on March 23, 1971.

(h) *Were there any discussions concerning the production of documents in the Government case with Mr. Jones,*

either at the meeting with Mr. Hollander on March 25, 1971, or at any other time?

Answer: No, to the best of affiant's recollection and belief.

(i) *On how many occasions did Mr. Hollander meet Mr. Turnbull in connection with the Government case?*

Answer: Twice, to the best of affiant's recollection and belief. The first meeting took place on October 29, 1969; the second on October 1, 1970, during the Turnbull deposition.

(j) *On any of the occasions when Mr. Hollander met Mr. Turnbull, did Mr. Turnbull discuss the facts, or statements, contained in documents not produced in the Government case?*

Answer: It is impossible to answer the question as written.

(k) *What explanation was given by Messrs. Turnbull, McCook, Lynn or Jones to the Department of Justice concerning the failure to produce documents in the Government case?*

Answer: None, to the best of affiant's recollection and belief.

(l) *In being shown the original copies of the documents not produced in the prior case, is Mr. Hollander's recollection refreshed as to whether he may have seen any such documents on some prior occasion?*

Answer: See Paragraph 4 *supra.*

(m) *In Exhibit 4 to the affidavit of Mr. Hollander, a transmittal letter dated November 3, 1969, to Mr. Turnbull from Mr. Hollander, to what additional document was Mr. Hollander referring in this letter? Did he receive the document?*

Answer: It is affiant's recollection and belief that he was referring to a proposal to the Government of American Samoa by Mr. McCook concerning the construction of a bulk petroleum plant in American Samoa, apparently mentioned by Mr. Turnbull [See Appendix to Holiander Affidavit, A-1, 2, and Standard's Memorandum, p. 22, lines 3-17]. It is affiant's further recollection and belief that this document was transmitted to affiant by Howard L. Winton through the mail with the memo notation "Re: United States v. Standard Oil From the files of Mr. Turnbull" in December, 1969 [See Appendix to Hollander Affidavit, A-5].

The proposal was later designated as part of the documents TU-1 to TU-100 and a copy was produced to Standard on April 13, 1970.

(n) *Were any documents collected from Messrs. Turnbull, McCook, or their representatives in investigations prior to filing the complaint in the Government case, not later marked with "TU" identification numbers?*

Answer: It is affiant's recollection and belief that no documents were collected from Messrs. Turnbull, McCook or their representatives in the investigation undertaken by affiant and his staff prior to the filing of the complaint in the Government case.

(o) *Were there discussions with Mr. Turnbull concerning production of the fourteen enclosures to the October 3, 1973 letter?*

Answer: No, to the best of affiant's recollection and belief. The 14 enclosures accompanying Mr. Turnbull's letter of October 4, 1973, were returned to Mr. Turnbull by mail with a covering letter on October 18, 1973. [See Appendix to Hollander Affidavit, A-22].

(p) *What documents did Mr. Hollander receive from Howard L. Winton, Esq., attorney for Mr. Turnbull, in December, 1969?*

Answer: See answer to question (m) *supra.*

6. Affiant's answers to those questions in Paragraph 14 of the Klitgaard Affidavit are as follows:

(a) *Is the Department of Justice voluntarily producing all non-privileged documents within the scope of the subpoena, or is it voluntarily producing only part of the documents?*

Answer: As stated in affiant's previous affidavit, Paragraph 12, the Department of Justice is voluntarily producing copies of those responsive non-privileged documents not previously sought by or provided to Standard and certain responsive handwritten notes as to which the Government would not assert any privilege.

Thus, it is affiant's information and belief that the Department of Justice is voluntarily producing only part of the documents called for by the subpoenas. Withheld in addition to all other privileged documents are those non-privileged documents which the Government has already produced to Standard in the Government case.

(b) *In paragraph 5 of the affidavit, Mr. Hollander states that "Turnbull documents which had been photocopied by the Government were designated TU-001 - TU-100"; were any documents in the files not photocopied by the Government and returned to Mr. Turnbull?*

Answer: It is impossible to answer the question as written. However, see answer to Question 5(d).

(c) *In paragraph 11 of the affidavit, Mr. Hollander states that the only Turnbull documents which he can recall seeing prior to the termination of the trial in the Government case were those designated TU-001 to TU-100; did the Department of Justice receive documents relating to the period 1961-1965 from Messrs. Turnbull, McCook, or their representatives, after the trial in the Government case, in addi-*

tion to TU-001 to TU-100, or in addition to the fourteen enclosures with the October 4, 1973 Turnbull letter?

Answer: It is affiant's recollection and belief that, except for public pleadings filed with the Court in this private action, the only other documents received by the Department of Justice from Messrs. Turnbull, McCook or their representatives relating to the period 1961-65, after the trial in the Government case, was a packet of photocopied documents apparently produced to Standard in this private case. These documents were transmitted by a covering letter dated November 18, 1975, which has already been supplied to Standard as A-60 to affiant's previous affidavit.

It is affiant's information and belief that Standard's counsel has telephonically requested the Government to supply him with copies of these documents. It is affiant's further information and belief that copies of these documents were mailed to counsel for Standard by transmittal letter on March 9, 1976, a copy of which is attached hereto as Exhibit 2.

(d) *Are the Department of Justice or Mr. Hollander withholding any documents under claim of privilege; do the withheld materials relate to earlier productions of documents by Messrs. McCook, Turnbull, or Lynn?*

Answer: It is affiant's information and belief that the Department of Justice and affiant are withholding privileged documents.

It is impossible to answer the second part of this question since it is impossible for affiant to determine what is meant by the words "relate to earlier productions of documents."

7. Affiant has reviewed Standard's memorandum in opposition. Standard has made a factual error based on affiant's handwritten notes appended to his previous affidavit. On pages 16 and 28 of Standard's memorandum,

Standard refers to a memorandum dated January 18, 1971. It is affiant's belief that the document in question is dated January 15, 1971, and refers to a conversation between affiant and Mr. Lynn. [Appendix to Hollander Affidavit, A-6]. It is affiant's recollection and belief that Mr. Lynn was informing affiant that Mr. Lynn had told Mr. Mussman that there were no documents other than those marked "TU."

BERNARD M. HOLLANDER
BERNARD M. HOLLANDER

Subscribed and sworn to before
me this 10th day of March, 1976.

(Remainder of jurat
omitted in printing)

D. MISCELLANEOUS DOCUMENTS AND TRANSCRIPTS (Excerpts).

1. United States of America v. Standard Oil Company of California, United States District Court, Northern District of California, Civil No. 52334-SC

a. CORRESPONDENCE WITH THE HONORABLE SAMUEL CONTI

i. Letter Dated February 23, 1976, by Counsel for Government

February 23, 1976

Honorable Samuel J. Conti
United States District Judge
United States District Court
Northern District of California
San Francisco, California 94102

Re: United States v. Standard Oil Company
of California, Civil 52334-SC (N.D. Cal.)

Dear Judge Conti:

Because matters relating to your Final Judgment in the above-entitled action are being litigated in the Central District of California before Judge Pregerson in *McCook v. SoCal,* a related case, we are taking the liberty of enclosing for your information a copy of the Government's Motion for a Protective Order which was filed on February 20, 1976.

Sincerely yours,

THOMAS E. KAUPER
Assistant Attorney General
Antitrust Division

By: BERNARD M. HOLLANDER, Chief,
Judgments and Judgment
Enforcement Section

Enclosure

cc: Thomas J. Klitgaard, Esq.
Pillsbury, Madison & Sutro
Standard Oil Building
225 Bush Street
San Francisco, California 94104

ii. Letter Dated March 17, 1976, by Counsel for Standard

LAW OFFICES OF
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March 17, 1976

The Honorable Samuel Conti
Judge of the United States
District Court
Northern District of California
U.S. Courthouse
450 Golden Gate Avenue
San Francisco, California 94102

Re: United States of America v. Standard Oil Company of California, No. C-52334 SC

Dear Judge Conti:

In May, 1974, after the judgment of Your Honor in *United States of America v. Standard Oil Company of California* (N.D.Cal. 1972) 362 F.Supp. 1331, was affirmed by the Supreme Court, *Standard Oil Company of California v. United States* (1973) 412 U.S. 924, a Mr. William R. McCook filed a treble damage action against Standard, Van Camp Sea Food Company, Star-Kist Foods, Inc., and Pan American World Airways, Inc., in the United States District Court for the Central District of California, based upon the judgment in the prior *Government* case. The plaintiff, relying on Section 5(a) of the Clayton Act, based his action against Standard principally upon the judgment and findings in the prior *Government* case, including a finding to the effect that the plaintiff had been excluded from the market in American Samoa by Standard's conduct.

The complaint sought damages in excess of $3,000,000 before trebling. The case was assigned to the Honorable Harry Pregerson.

In the first few months after the complaint was filed, the plaintiff filed a motion for summary judgment against defendant Standard on the issue of liability, claiming that the judgment in Your Honor's case should be conclusive upon Standard as to liability because Standard had not been able to come forward with any new evidence to show why a different result should obtain. Judge Pregerson denied the motion for summary judgment, holding that the judgment in the prior case created only a rebuttable presumption, and that defendant Standard was entitled to present a full defense to the plaintiff's claims in his Court, as permitted by Section 5(a) of the Clayton Act.

In the period after the denial of the motion for summary judgment, Standard initiated discovery proceedings against plaintiff, including a request for production of documents. In response to the request, the plaintiff produced, from his own files, and from the files of Mr. Raymond C. Turnbull, his partner or agent in the proposed venture in American Samoa, a number of important new documents which contradicted plaintiff's testimony in the prior *Government* case, and which were relevant to this Court's findings on liability and foreclosure. Subpoenas duces tecum to Mr. Lynn, an attorney who represented plaintiff in the *Government* case, and to Mr. Raymond C. Turnbull, plaintiff's partner or agent, who assisted plaintiff in collection of data in the *Government* case for the Department of Justice, produced still further documents which were important and material to the issues in the *Government* case. None of these documents were produced by the plaintiff, his agents or attorneys in the *Government* case, despite

repeated demands upon the plaintiff by Standard, and despite subpoenas duces tecum served upon plaintiff and his attorney. At the time of the prior *Government* case, it was plain that plaintiff was contemplating bringing suit against Standard based upon the eventuality that a judgment might be entered in the *Government* case adverse to Standard, and plaintiff's partner or agent, Mr. Turnbull, supplied a number of documents to the Department of Justice, which in turn were used in evidence in the case pending in Your Honor's Court.

In the course of discovery in the present case, in response to questions concerning the location and identity of documents and the reasons for failure to produce the new documents in the *Government* case, the plaintiff's partner, Mr. Turnbull, has tended to lay the blame on Mr. Hollander and the Department of Justice. Mr. Turnbull has testified, in substance, that he made his files concerning petroleum products available to Mr. Hollander in October, 1969, that Mr. Hollander took the files with him, and that Mr. Hollander thereafter returned the documents in the files in two separate packages. Mr. Turnbull, in laying the blame on Mr. Hollander, has testified that in making subsequent searches in the *Government* case for documents responsive to Standard's requests and subpoenas, he did not look in the materials sent back to him by Mr. Hollander, because he thought that copies of these documents had already been supplied to Standard, but looked through other files and found no additional documents; he testified that when he collected documents for plaintiff's lawyers in the present case, he turned over to the lawyers the documents that Mr. Hollander had returned to him. At his deposition, Mr. Turnbull identified a number of documents which he claims were in his files in October, 1969, and which he claims he made available to Mr. Hollander

in the *Government* case, but which were not later delivered to Standard in the *Government* case.

Because of the testimony by Mr. Turnbull, and because of the failure of Mr. McCook, Mr. Turnbull, and Mr. Lynn to have produced the documents in the prior case, and in view of the contradictions between the documents and the testimony of Mr. McCook in the *Government* case, Standard sought to take the depositions of the Department of Justice and Mr. Hollander in the *McCook* case, to determine if either of these deponents had additional documents not yet produced by Mr. Turnbull or Mr. McCook, and to determine what, in fact, Mr. Turnbull, Mr. McCook, and Mr. Lynn had told Mr. Hollander in 1969 concerning the production of documents. Also, it was Standard's purpose to see if Mr. Turnbull, Mr. McCook and his attorney were lying in the present case when they described the discovery procedures in the *Government* case, and when they sought to excuse their failure to produce documents in the *Government* case either by asserting that the documents were in separate files, or that they assumed that Mr. Hollander had made them available to Standard. In response to the notices of deposition, the Department of Justice and Mr. Hollander filed a motion for a protective order, attaching to the motion certain additional new documents which Mr. Turnbull had produced for the Department of Justice in October, 1973, within four months after the judgment of Your Honor was affirmed by the Supreme Court. None of these documents had previously been turned over to Standard by Mr. Turnbull or Mr. McCook in the *Government* case, despite repeated requests, or (with one exception) in the present case, despite requests for production and subpoenas duces tecum. Indeed, in the six days of the deposition of Mr. Turnbull in the present case concerning the production of documents, Mr. Turnbull claimed that he had no other documents. The

additional new documents, like the previously produced new documents, contain important and relevant new information, not presented to Your Honor.

The Department of Justice and Mr. Hollander opposed the request by Standard to take their depositions in the present case, on the ground that the depositions were intended only to harass and annoy the Department of Justice and Mr. Hollander, and on the further ground that by affidavit filed before Judge Pregerson, Mr. Hollander had set forth all he knew about the discovery from Messrs. Turnbull, Lynn, and McCook in the *Government* case. Further, the Department of Justice and Mr. Hollander told Judge Pregerson that Standard's remedy for newly discovered evidence was a motion in Your Honor's Court, pursuant to Rule 60(b), Federal Rules of Civil Procedure. At a hearing on March 15, 1976, Judge Pregerson granted the motion for the protective order; however, in the course of denying Standard the right to take the depositions of the Department of Justice and Mr. Hollander at the hearing on March 15, Judge Pregerson stated that the papers filed in his Court raised serious questions as to the integrity of the proceedings and judgment in the *Government* case, which ought to be brought to Your Honor's attention.*

---

*Standard will file a request with Judge Pregerson for reconsideration of his ruling, on the grounds, *inter alia,* that the tests to be used in the *McCook* case as to whether plaintiff should be permitted to use the judgment in the *Government* case as evidence, where he had earlier failed to produce documents, are different than the standards that might be applied by this Court, or by the United States Supreme Court, in vacating the judgment or amending the findings in the *Government* case on the grounds of fraud, newly discovered evidence, or the like. In the *McCook* case, it is Standard's position that Mr. Cook should not be permitted to use the judgment in the prior case as evidence against Standard, (a) where Standard did not have a full and fair opportunity to defend (*Blonder-Tongue v. University Foundation* (1971) 402 U.S.

For Your Honor's information, we are enclosing copies of the following memoranda, exhibits, and affidavits which were filed in the United States District Court for the Central District of California following the opening memorandum, exhibits and affidavit of the Department of Justice and Mr. Hollander, copies of which have already been sent to you by Mr. Hollander:

(a) Memorandum by Defendant Standard Oil Company of California in Opposition to Motion Pursuant to Federal Rule 26(c)(1) for a Protective Order that Defendant's Notices of Deposition of the Department of Justice and Bernard M. Hollander, Esq., be Vacated and the Discovery Not Had, dated March 5, 1976;

(b) Affidavit of Thomas J. Klitgaard in Support of Memorandum by Standard Oil Company of California in Opposition to Motion by United States Department of Justice and Bernard M. Hollander, Esq., for a Protective Order, dated March 5, 1976;

(c) Exhibits to Memorandum by Defendant Standard Oil Company of California, dated March 5, 1976;

(d) Corrections to Memorandum by Defendant Standard Oil Company of California in Opposition to Motion Pursuant to Federal Rule 26(c)(1) for a Protective Order that Defendant's Notices of Deposition

313, 334; *Rachal v. Hall* (5 Cir. 1970) 435 F.2d 59, 62-63, certiorari denied (1971) 402 U.S. 904; (b) where the plaintiff ignored the subpoenas duces tecum in the *Government* case and failed to produce all relevant documents, and thus because of his unclean hands may not later rely upon that judgment as evidence in his own suit (e.g., *Keystone Co. v. Excavator Co.* (1933) 290 U.S. 240, 244; *Shawkee Mfg. Co. v. Hartford Co.* (1944) 322 U.S. 271, 273); and (c) where the probative value of the judgment as evidence is outweighed by the danger of prejudice to Standard because of the incomplete record in the *Government* case (Rule 403, Federal Rules of Evidence).

of the Department of Justice and Bernard M. Hollander, Esq., be Vacated and the Discovery Not Had, dated March 5, 1976;

(e) Government's Reply Memorandum in Support of its Motion for a Protective Order that Defendant's Notices of Deposition of the United States Department of Justice and Bernard M. Hollander, Esq., be Vacated and the Discovery Not Had, dated March 10, 1976;

(f) Supplemental Affidavit of Bernard M. Hollander, Esq., dated March 10, 1976; and

(g) Standard's Request for Reconsideration of Order, or, in the Alternative, Request for Certification of Order for Interlocutory Appeal Pursuant to Section 1292(b), Title 28, United States Code, dated March 17, 1976.

In view of the comments by Judge Pregerson during the hearing on March 15, 1976, we respectfully request a conference with Your Honor at the early convenience of the Court.

Respectfully yours,

THOMAS J. KLITGAARD

Encs.

cc: The Honorable Harry Pregerson (w/o enc.)
United States District Court
Central District of California

Anthony E. Desmond, Esq. (w/o enc.)
Bernard M. Hollander, Esq. (w/o enc.)
Kindel & Anderson (w/o enc.)
Attn: Kevin P. [illegible]ne, Esq.

Defense Counsel (w/o enc.)

iii. Letter Dated March 19, 1976, by Counsel for McCook

KINDEL & ANDERSON

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REFER TO FILE NO.
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March 19, 1976

The Honorable Samuel Conti
Judge of the United States District
Court
Northern District of California
United States Courthouse
450 Golden Gate Avenue
San Francisco, California 94102

Re: United States of America v.
Standard Oil Company of California
No. C-52334 SC

Dear Judge Conti:

Although our client, William R. McCook, is not a party to the above-referenced action (hereinafter *"Government*

case"), we have received from counsel for Standard Oil Company a copy of their letter to Your Honor of March 17, 1976 and we feel that some brief response thereto is appropriate on behalf of our client.

As stated by Standard Oil's counsel, Judge Pregerson has now granted a protective order to the Department of Justice and to Bernard M. Hollander in connection with proposed "documents" discovery by Standard Oil. We appeared and argued in support of this motion on two principal grounds: (1) that these purportedly "new" documents which we have provided to Standard Oil's counsel are entirely without relevance to Standard's defense in either the *Government* case or in the presently pending treble damages action by our client; and (2) that in any event, Standard Oil's avowed purpose in seeking this discovery—to lay a foundation for a motion before Judge Pregerson to exclude the *prima facie* effect accorded to the judgment rendered in the *Government* case by Section 5(a) of the Clayton Act—constitutes an impermissible collateral attack upon that judgment which can only be made, if at all, before Your Honor.

Judge Pregerson essentially agreed with both of the foregoing grounds and suggested to Standard Oil's counsel that, in light of Your Honor's prior extensive involvement in the *Government* case, any question concerning the propriety of the judgment rendered therein should be considered by Your Honor. However, we wish to make it clear that, as has been repeatedly the case in the past, Standard Oil's counsel have grossly misstated the facts relating to the current dispute in the following particulars, among others:

(1) none of the documents produced and cited by Standard Oil contain any "new" or "important" information not

previously presented to Your Honor (see pp. 13-17 of enclosed transcript);

(2) Mr. Turnbull has at no time and in no sense laid any "blame" on Mr. Hollander or the Department of Justice (see pp. 41-43 of enclosed transcript);

(3) Judge Pregerson merely commented that Standard Oil's counsel were making serious allegations concerning the propriety of the judgment in the *Government* case, while expressing no opinion as to the validity of those allegations and, on the contrary, expressly leaving any determination of such validity for any proceeding which Standard Oil might choose to institute before Your Honor (see pp. 37-38 and 47 of enclosed transcript).

Judge Pregerson's ruling on this matter on March 15, 1976 is simply that Standard Oil is free to introduce in the action brought by our client any and all evidence relevant to their defense but that, as long as the judgment in the *Government* case stands, it "shall", pursuant to Section 5(a) of the Clayton Act, constitute *prima facie* evidence in our client's lawsuit (see p. 27, lines 22-24 and p. 37, lines 12-15 of the enclosed transcript).

We submit that this ruling is correct and, additionally, that there is no reason for Your Honor to alter in any fashion the results produced by the lengthy proceedings in the *Government* case. For these reasons, we request notice and the opportunity to appear before Your Honor in connection with any conference or hearing which may be held concerning this matter.

Finally, in the interests of preventing any further misstatements of the pertinent facts, we are enclosing for Your

Honor's convenient reference a copy of the transcript of the proceedings before Judge Pregerson on March 15, 1976.

Very truly yours,

Kevin P. Kane
of KINDEL & ANDERSON

KPK:sb
Enclosure
cc: The Honorable Harry Pregerson w/o encl.
United States District Court
Central District of California

Anthony E. Desmond, Esq. w/o encl.
Bernard M. Hollander, Esq. w/o encl.
Stanley M. Gorinson w/o encl.
All Defense Counsel w/o encl.

iv. Letter Dated March 24, 1976, by Counsel for Government

March 24, 1976

The Honorable Samuel Conti
United States District Judge
United States District Court
Northern District of California
San Francisco, California 94102

Re: United States v. Standard Oil Company of California, Civil 52334-SC (N.D. Cal.)

Dear Judge Conti:

As counsel have already informed you, the Honorable Harry Pregerson, United States District Judge for the Central District of California, on March 15, 1976, granted a protective order vacating notices of deposition and sub-

poenas served pursuant thereto upon the Department of Justice and Bernard M. Hollander by Standard Oil Company of California ["Standard"] in a private treble damage action entitled *McCook v. Standard Oil Company of California,* (CV 74-1190 HP, C.D. Cal.). During the course of the hearing, Judge Pregerson observed that certain suggestions by Standard regarding possible improprieties by the Government in the above-entitled Government case should, if true, properly be brought to the attention of Your Honor. Let me say flatly that these suggestions of impropriety are without foundation.

Standard's asserted need for discovery of the Department of Justice and its counsel, as set forth in its letter of March 17, 1976 (pp. 2-3), is that documents now produced by Mr. Turnbull, an associate of Mr. McCook, which he said he made available to the Government in October 1969, were not delivered to Standard in the course of the Government's case. Standard makes this assertion in the face of Mr. Turnbull's testimony during his deposition on document production in the private case, which consumed 6 days and more than 1200 pages, that he did not remember what he had supplied to the Government at that time. [Transcript of March 15, 1976 Hearing, at 41-43]. Moreover, as made clear in my sworn affidavit of February 19, 1976 in the private case, the only Turnbull documents I can recall receiving prior to the termination of the trial in the Government case* were turned over to Standard on April 13, 1970.

*To the best of my recollection, Mr. Turnbull produced three files of documents at a brief meeting on October 29, 1969. That recollection is reinforced both by my letter of November 3, 1969, returning those three files, receipt of which was acknowledged by Mr. Turnbull on November 18, 1969, and by a copy of my handwritten receipt listing those same three files, dated October 29, 1969. Copies of both documents, which were provided to Standard as exhibits to my affidavits in the private case, are attached.

[Hollander Affidavit, Pars. 7 and 11]. Moreover, as also stated in my affidavit, to the best of my information and belief, copies of those non-privileged third party documents which were responsive to Standard's demands at that time, including those supplied by various departments of the Government and the Government of American Samoa, were turned over to Standard prior to trial. [Hollander Affidavit, Par. 11].

Interestingly enough, the only "additional new documents" not turned over to Standard by the Government which Standard points to as assertedly "contain[ing] important and relevant new information, not presented to Your Honor", are 14 enclosures to Mr. Turnbull's post-Judgment letter of October 4, 1973, a letter which set out his comments on the plan for sharing the petroleum storage facilities in American Samoa. Your Honor will recall that the Government was instructed to turn over any such comments on the plan to Standard, and it did so promptly. However, since the enclosures did not deal in any way with the plan, they were promptly returned to Mr. Turnbull by cover letter of October 18, 1973. [Appendix to Hollander Affidavit, A-22]. Moreover, the subject matter of these enclosures was described in Mr. Turnbull's letter, which explicitly indicated that there were 14 enclosures. [A copy of the Turnbull letter is attached.] At no time during the long period of negotiations concerning the plan did Standard ever make any request for these enclosures.

Obviously, the Government is anxious to have this matter cleared up and have Standard's innuendos laid to rest once and for all. We would suggest, however, that the proper method for dealing with this matter is not to hold a conference but to require Standard to set forth in a motion

to this Court the relief it seeks and the basis for seeking such relief.

Sincerely yours,

THOMAS E. KAUPER
Assistant Attorney General
Antitrust Division

By: Bernard M. Hollander, Chief
Judgments and Judgment
Enforcement Section

Attachments
cc: The Honorable Harry Pregerson
Kevin P. Kane, Esquire
Angelo Palmieri, Esquire
Thomas J. Klitgaard, Esquire
William E. Mussman, Esquire

v. Letter Dated April 5, 1976, by Counsel for Standard

April 5, 1976

The Honorable Samuel Conti
Judge of the United States District Court
Northern District of California
United States Courthouse
450 Golden Gate Avenue
San Francisco, California 94102

Re: United States of America v. Standard Oil Company of California, No. C-52334 SC

Dear Judge Conti:

In response to the letter to Your Honor from the Department of Justice dated March 24, 1976, and the letter from counsel for the treble damage plaintiff, William R.

McCook, dated March 19, 1976, we note the following facts. First, there were documents withheld from the Court and from Standard in the prior case, which were in the files of Messrs. Turnbull, McCook, and their lawyers, and which were not produced despite repeated requests by Standard, and despite subpoenas duces tecum served upon Mr. McCook and his attorney Lynn. Second, the information in the documents which were withheld undermined, and contradicted, the testimony of Messrs. McCook and Turnbull in the prior case; the documents put in a different context the evidence designated by the Department of Justice for inclusion in the record and which was cited, in part, by the Court in its findings.

We note, briefly, a few of the statements made by the Department of Justice and Mr. McCook in their recent letters to the Court, as follows:

A. DEPARTMENT OF JUSTICE.

1. Recollection of Turnbull:

The letter from the Department of Justice misrepresents some 1200 pages of testimony by Mr. Turnbull with respect to the production of documents in two ways. *First,* the letter states that Mr. Turnbull, in approximately 32 lines of that testimony, stated that he "did not remember" what documents he had supplied to the Government in October, 1969. That is not what Mr. Turnbull testified. In those 32 lines Mr. Turnbull testified that he did not remember whether Mr. Hollander, at Mr. Turnbull's office in October, 1969, looked through the documents at the office, or whether Mr. Hollander excluded documents from the files at the office. *Second,* and more importantly, the letter isolates only a fraction of Mr. Turnbull's testimony and thereby misrepresents his testimony by failing to refer to other significant portions of that testimony.

The testimony by Mr. Turnbull concerning the production of documents in October, 1969, is set forth, in detail, in the reply by Standard to the Department of Justice's memorandum in opposition to Standard's request, filed with The Honorable Harry Pregerson, for reconsideration of the order entered March 15, 1976, denying Standard discovery from the Department of Justice and Mr. Hollander, and in the exhibits to the reply. We have delivered a copy of the reply, and of the exhibits, to Your Honor; we do not repeat their contents here.

2. Failure to Produce Post-Judgment Documents:

The Department of Justice states that the "only" additional new documents, not turned over to Standard by the Government, which Standard points to as containing important and relevant new information, were the 14 enclosures to Mr. Turnbull's post-judgment letter to the Department of Justice dated October 4, 1973. The Department of Justice is in error.

In the prior case, there were two sets of documents in question. First, there were documents which were in Mr. Turnbull's files in October, 1969, and which, according to Mr. Turnbull, were made available to the Department of Justice. This was one group of documents.

Second, there was a second group of documents delivered to the Department of Justice post-trial, within four months after the judgment was affirmed. These documents, which related to the time period 1963-1965, were directly responsive to the subpoenas duces tecum which had been served upon Mr. McCook and Mr. Lynn, and to the repeated requests by Standard to the Department of Justice for any additional documents during the course of the *Government*

case. Instead of bringing these documents to the attention of Your Honor, or of Standard, the Department of Justice returned them to Mr. Turnbull. In returning the documents, however, the Department made copies of them, which it retained in its files.

The Department of Justice states that the subject matter of the second group of documents—the 14 enclosures—was described in Mr. Turnbull's letter dated October 4, 1973. While the Turnbull letter referred to the 14 enclosures, it did not show that they concerned matters during the time period 1963-1965; instead, the letter indicated that the documents referred to current business matters, which the Department of Justice had requested be kept confidential. Further, Your Honor had ordered the Department of Justice to produce for Standard copies of the correspondence from petroleum suppliers concerning the proposed plan for sharing the petroleum storage facilities; in disregard of the order, the Government did not provide the 14 enclosures.

3. Lack of Interest in Seeking Immediate Resolution of Dispute:

The Department of Justice states that the Government is "anxious" to have this matter cleared up with respect to the failure to produce documents in the *Government* case. In these circumstances, we do not understand why the Department of Justice is willing to acquiesce in, or promote, the use of the prior judgment in the pending treble damage suit, where there was a plain failure to produce documents by Mr. McCook in response to subpoenas duces tecum.

The Department of Justice refers to Standard's statements as "innuendos"; on the contrary, Standard is dealing in facts. The facts, as developed to date, show a withholding of evidence in the prior case; the facts show the following:

(a) A failure by Messrs. Turnbull and Lynn to produce documents in their files;

(b) A failure by the Department of Justice to produce documents delivered to it by Mr. Turnbull (if Mr. Turnbull is to be believed) prior to trial;

(c) A failure by the Department of Justice, as shown by its own internal records, to produce documents which it received within one year after judgment, which were responsive to subpoenas duces tecum served upon Messrs. McCook and Lynn, and which contradicted the representations that Mr. Turnbull had no further documents.

In sum, the Department of Justice was aware, at some point, that there were new documents in the files of Turnbull and McCook, but did not bring this matter to the attention of this Court or of Standard.

In each of the listed instances, the failure to produce documents in the *Government* case is shown by simple fact, not by innuendo.

B. McCOOK.

1. New and Important Documents:

In his letter dated March 19, 1976, to Your Honor, McCook states that none of the documents produced and cited by Standard contain any "new" or "important" information not previously presented to Your Honor. We disagree. First, there is no dispute that the documents contain new information; second, it cannot be said that the information is not important when it contradicts the testimony of Mr. McCook in the prior case.

On March 29-30, 1976, Standard took the depositions of two lawyers in San Diego retained by Mr. Lynn in 1970, on behalf of Turnbull and McCook, to investigate a possible claim against Standard, based upon a possible judgment in

the *Government* case. In the files of the two attorneys, we discovered still further copies of new documents which had not been produced in the *Government* case; in addition, we found further new and different documents not produced in the prior case and likewise not yet produced in the present case, but which had been delivered to the lawyers in 1970 by Mr. Turnbull. The information in these documents puts a different light on the interest of Turnbull and McCook in Samoa, and on the interest of a third party, Shell, which was referred to in Your Honor's findings.

2. Blame on Hollander:

McCook states that Mr. Turnbull has at no time laid any "blame" on Mr. Hollander or the Department of Justice for failure to produce documents in the prior case. This statement is contrary to Mr. Turnbull's testimony; he has testified that when he looked in his files in the prior case for documents for Standard, and for Mr. Lynn, he did not look in the documents which had been returned to him by the Department of Justice. He stated that he did not look in the documents delivered to the Department of Justice, because he assumed that they had already been made available to Standard.

Further, Mr. Turnbull testified in the present case that he did not deliver to Lynn or the two attorneys in San Diego any documents that he did not provide to Mr. Hollander; yet in the files of Mr. Lynn and the two lawyers in San Diego, there were documents which the Department of Justice did not deliver to Standard in the prior case.

3. Comment by Judge Pregerson:

Mr. McCook states that Judge Pregerson, at the hearing on March 15, 1976, "merely commented" that Standard was making serious allegations concerning the propriety of the judgment in the *Government* case, while expressing no

opinion as to the validity of the allegations. In fact, Judge Pregerson stated that

> "it just seems to me that what you are saying is attacking the integrity of the process, the integrity of the Justice Department, the integrity of Judge Conti's ruling. And if I were Judge Conti I would certainly want to know about it" (Tr., pp. 37-38).

And, he added:

> "I certainly think that he [Judge Conti] not only has an interest in the matter, because he did decide the case, but that some serious questions have been raised concerning the integrity of that case, and those matters ought to be laid before him under Rule 60" (Tr., p. 47).

CONCLUSION

In view of the failure by Messrs. McCook, Turnbull, and Lynn, and the Department of Justice, to produce documents in the *Government* case, and in view of the fact that a judgment of the Supreme Court is involved, we believe that a conference with Your Honor would be appropriate to determine what steps can, or should, be initiated in the prior case.

Respectfully yours,

Thomas J. Klitgaard

cc: The Honorable Harry Pregerson
United States District Court
Central District of California

Anthony E. Desmond, Esq.
Bernard M. Hollander, Esq.
Kindel & Anderson
Attn: Kevin P. Kane, Esq.

Defense Counsel

vi. Letter Dated April 15, 1976, by the Honorable Samuel Conti

United States District Court
Northern District of California
San Francisco, California 94102

Chambers of
Samuel Conti
United States District Judge

April 15, 1976

Re: U.S. v. Standard Oil Company
of California, C-52334 SC

Gentlemen:

As far as I am concerned, this case is closed. All correspondence regarding *McCook v. Standard Oil Company of California*, CV-74-1190 HP, C.D.Cal., should be addressed to Judge Pregerson.

Yours very truly,

Samuel Conti
U.S. District Judge

Bernard M. Hollander, Esq.
U.S. Dept. of Justice

Thomas J. Klitgaard, Esq.
Pillsbury, Madison & Sutro.

b. POST TRIAL BRIEFS (EXCERPTS)

i. United States, Filed September 11, 1972

United States District Court for the Northern District of California

UNITED STATES OF AMERICA, *Plaintiff*, v. STANDARD OIL COMPANY OF CALIFORNIA, *Defendant*.	Civil Action No. 52334-SC

• • • • • • • •

Numerous petroleum companies, beginning in 1955 and continuing to the present, have considered entry into the Samoan market. Because of SoCal's already dominant position in American Samoa, stemming from the extremely favorable 1956 permit and agreement which it gained by highly questionable means, and from SoCal's illegal requirements contracts with major Samoan accounts, it has been impossible for a competitor to enter the market. • • • The following companies considered the American Samoan market but for the reasons described above, determined that entry would not be feasible.

• • • • • • • •

(4) *Shell*

• • • • • • • •

Between October 1964 and mid-1965, Shell studied the possibility of supplying diesel fuel for the fishing fleets at American Samoa [GX 139, GX 207, GX 72], [footnote omitted] but decided not to enter the market at that time [GX 156-157].

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(6) *William R. McCook*

William McCook, an independent investor, became interested in American Samoa as a market for petroleum products in 1965. At that time he arranged for the financing of a petroleum storage facility and submitted to GAS a proposal to enter the market [TR 2064, 2065; GX 228]. However, McCook learned of SoCal's recent price reduction to the canners, the airlines and GAS and, being reluctant to enter into a price war with SoCal, abandoned the project.

> It appears to me like we were fiighting a losing battle because that was the first of what could have been several reductions in price. Obviously, I'm in no position to buck Standard Oil, and when Standard Oil reduced their price it did take a lot of sting out of it. [TR 2071].
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> • • •
>
> . . . knowing they could cut the prices and live for many, many years beyond our death and not face the overall picture [TR 2074].

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ii. Standard Oil Company of California, Dated September 18, 1972

United States District Court for the Northern District of Califo·ia

(Title omitted in printing)

• • • • • • • •

William R. McCook (Govt. Br. 48). In referring to William McCook as an "independent investor," the Government neglects to mention that Mr. McCook was closely associated with Raymond Turnbull and that it was due to Mr. Turnbull's efforts that McCook became interested in the Samoan market. The Government states, relying on the deposition of McCook, that he learned of Standard's 1965 price reductions to the canners, the airlines and GAS and, being reluctant to enter into a price war with Standard, abandoned the project.

The facts are that the McCook proposal was made in August of 1965 (Exh. D-34Q), and it died for lack of interest or pursuit on the part of Governor Lee. He never even responded to the McCook proposal! Mr. Turnbull, who did most of the negotiating with Lee and the canners, wrote to Governor Lee in November 1965, to find out what decision Lee had made on McCook's proposal (Exh. D-34T). Turnbull's letter indicates that even with knowledge of Standard's 1965 price reductions, Turnbull and McCook still considered their proposal viable. Obviously McCook was confused in his deposition.*

Actually there is no evidence to support the Government's claim that the McCook proposal was even "abandoned." It was never withdrawn, but admittedly it was not pursued. The evidence suggests that Governor Lee, by 1965, did not consider acceptable any proposal in which Turnbull was involved because Lee was not sure enough of the integrity or dependability of the group which Turnbull represented (Exh. D-21MM (referring to a preliminary Turnbull proposal in April, 1965, which was the precursor of the final McCook-Turnbull-Summit Petroleum proposal made in August (see Exhs. D-34K, p. 3, D-34N, D-43D)); Tr. 328-330).

The McCook proposal itself may explain why there was no follow-up. It was predicated on the McCook group obtaining "long-term" contracts with GAS, Star-Kist, Van Camp and Pan Am, and prices were to "vary with the world petroleum market" (Exh. D-34Q). Quite obviously, the proposal, for which Governor Lee would be the "catalyst," contemplated replacing Standard in the Samoan market.

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*The confusion of McCook is apparent from reading his testimony (Tr. 2068-2071). He did not even know what Standard's prices were, and he appears to be giving his present opinion, looking back on the earlier events.

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2. William R. McCook v. Standard Oil Company of California, et. al., United States District Court, Central District of California, Civil No. 74 1190 HP

a. MOTION FOR SUMMARY JUDGMENT

I. Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment, Served August 14, 1974

United States District Court for the Central District of California

WILLIAM R. McCOOK, *Plaintiff,* vs. STANDARD OIL COMPANY OF CALIFORNIA, et al., *Defendants.*	Civil No. 74 1190 HP

Plaintiff seeks in the instant action to recover treble damages and costs of suit, including reasonable attorneys' fees, for violations of Section 3 of the Sherman Act, 15 United States Code Section 3 * * * by, *inter alia,* defendant Standard.

• • • • • • • •

Plaintiff submits that, pursuant to Section 5(a) of the Clayton Act, 15 United States Code Section 16(a), Judge Conti's Findings and Judgment in the prior action are prima facie evidence of each and every material allegation contained in Paragraphs 1, 3, 4, 8, 9, 10, 11 and 12 of the complaint and that this Court's jurisdiction herein, plaintiff's status as a potential entrant into the American Samoan petroleum products market, the identity of such market as the relevant geographic and product market, defendant Standard's violations of Section 3 in connection with its dominance of the foregoing market, and the fact of plaintiff's injury as a result of such violations are *all thereby presumptively established.*

In order to simplify this action and to focus upon the *only remaining issue* as to defendant Standard, to wit, the amount of plaintiff's damages, plaintiff now moves under rule 56 of the Federal Rules of Civil Procedure for partial summary judgment as to the liability only of defendant Standard alone.

• • • • • • • •

• • • [T]he Findings in the prior action specifically focused on the fact that plaintiff was one of eight named potential competitive suppliers foreclosed from the market by defendant Standard's illegal combination and conspiracy with others and its illegal requirements contracts. Under Section 5(a) of the Clayton Act, such finding is prima facie evidence of plaintiff's status as a fully prepared and determined potential entrant into the market who was directly injured by defendant Standard's illegal activities, all as alleged in Paragraphs 3 and 12 of the complaint herein.

• • • • • • • •

[P]laintiff was the object of direct focus in the Government's evidence and the specific designation of plaintiff in Judge Conti's Findings as a foreclosed potential competitive supplier is necessarily prima facie evidence of plaintiff's status as a person injured in his business or property by defendant Standard's illegal activities.

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ii. Reply Memorandum in Support of Motion for Partial Summary Judgment, Dated September 17, 1974

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Section 5(a) should not and cannot be read to preclude collateral estoppel effect and, since defendant Standard's opposition to the instant motion rests entirely upon a rehashing of the evidence in the prior action, summary judgment should be granted as requested.

• • • • • • • •

In the instant case, defendant Standard has presented this Court with no new evidence of any kind. Its entire opposition rests upon the purely legal argument that plaintiff's evidence, the findings in the prior action, is not supported by the evidence whereupon such "evidence" was created.

• • • • • • • •

It is inherently incredible and manifestly unjust that defendant Standard, having lost in the prior action and having had that loss affirmed on appeal, could now escape liability on the same evidence of the same facts before a different tribunal. Defendant Standard's opposition to the instant motion is by definition insufficient and summary judgment should be granted accordingly.

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iii. Supplemental Reply Memorandum in Support of Motion for Partial Summary Judgment, Dated October 18, 1974

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Try as it may, Standard cannot evade the plain fact that it is now presenting this Court with the same old evidence and arguments found insufficient by both Judge Conti and the United States Supreme Court.

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If Standard had any *new, previously unobtainable* evidence of sufficient weight to raise a genuine issue of material fact concerning plaintiff's liability case, then it certainly would be entitled to produce and argue that evidence. However, • • • Standard had done nothing more than drag out the same old evidence and issues. • • •

• • • • • • • •

Standard's blatant failure to produce before this Court any truly new, previously unobtainable evidence to rebut plaintiff's liability case also constitutes a failure to raise

any genuine issue of material fact. The evidence presented in the government action has already been evaluated by Judge Conti and subsumed under his Findings and Judgment, which now constitute plaintiff's "evidence." Since Standard utterly fails to produce anything other than the evidence before Judge Conti, it is left with the sole argument that plaintiff's "evidence" is unsupported and in fact contradicted by the evidence upon which such "evidence" is based.

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b. TRANSCRIPTS OF PROCEEDINGS BEFORE THE HONORABLE HARRY PREGERSON

i. Hearing: March 15, 1976

United States District Court for the
Central District of California

(Title omitted in printing)

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[3]

THE CLERK: • • • Civil No. 74-1190-HP, William R. McCook vs. Standard Oil Company of California, et al.

Your Honor, this matter is on the Court's calendar this morning for hearing a motion by the Department of Justice for protective order that defendant's notice of depositions of the United States Department of Justice and Bernard M. Hollander be vacated and the discovery not be had. That motion was filed on February 23, 1976.

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MR. DESMOND: For the Government and for Bernard M. Hollander, Anthony Desmond.

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In brief summary our position is as follows:

The discovery sought is intended to harass, or will have the necessary and probable effect of harassing. It is, moreover, unreasonable, in that it seeks documents already obtained, or for a limited number of documents voluntarily supplied.

Secondly, no showing has been made by Standard, despite the large bulk of filings created by repeatedly copying and attaching documents already on file with the Court. No showing whatsoever has been made that documents exist which the Government possessed prior to the trial of the Government case, and which the Government did not produce to Standard. The facts regarding Mr. Turnbull's production of documents in the Government case are now clear, thanks to records maintained by the Department of Justice.

Third. In any event, the Government has produced

[7]

all of the nonprivileged documentary information it has regarding document production by Turnbull and his counsel and associates, and Mr. Hollander has supplied affidavits which exhaust his present, refreshed recollection of those seven-year old events.

No further discovery should be permitted against the Department and Mr. Hollander.

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[11]

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THE COURT: All right. Does anyone else wish to be heard on this side?

MR. KANE: I do, your Honor.

[12]

Kevin Kane of Kindel & Anderson for the plaintiff.

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First and foremost, it seems that Standard's counsel have taken pains to suggest through deposition excerpts taken out of context that the plaintiff somehow believes that the Justice Department may have withheld or suppressed documents in the Government case.

Your Honor, I am here to tell this Court that is absolutely false. We have in no way suggested this and we have no reason to believe this. We believe Mr. Hollander to be an honorable, dedicated and highly competent public servant who acted in nothing but the most professional manner in the Government case.

We also contend and wish this Court to be aware—

THE COURT: Mr. Klitgaard, are you contending that Mr. Hollander intentionally suppressed relevant documents?

MR. KLITGAARD [counsel for Standard Oil Company of California]: We are not contending that, your Honor. We are simply trying to find out what Mr. Turnbull—

[13]

THE COURT: All right, you have answered my question.

MR. KANE: I am glad we got that out of the way, your Honor.

Secondly, I think it is germane for this Court to take a close look at the type of documents we are talking about. After all, the only justification for deposing the Justice Department and Mr. Hollander is that supposedly relevant evidence that would have been material to Standard's defense in the Government case was somehow not made available to them.

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All of this evidence, your Honor, is simply cumulative to what they already had. Neither this document nor any

other document produced in the present action adds anything new to what was produced and argued in the Government case.

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[21]

And, finally, I should say, your Honor, that this Court really, in ruling on the propriety of the proposed discovery, should look at the end reason for wanting to do this.

Standard makes no bones about what they intend to do. They intend to finish all of this discovery, and then they are going to make a motion before this Court to have the Government case, and the judgment in that case and findings, excluded as prima facie evidence, on a number of different grounds relating to the fact that documents now produced were not produced for them in the Government case.

Your Honor, if Standard has any dispute with the propriety of the judgment in the Government case, its remedy is clear: Go back to Judge Conti. Don't come to this Court.

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If Standard wants to make a collateral attack upon the Government judgment, Rule 60 clearly gives it the vehicle

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to do so. • • •

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THE COURT: Mr. Klitgaard, why don't you bring these matters before Judge Conti?

In effect, you are saying that the Government with-

[23]

held evidence in that case which would have helped Standard, and this was done knowingly.

It would just seem to me that perhaps he ought to be the judge to rule on it. He sat on the case. If he was deceived, I am certain he would be concerned.

MR. KLITGAARD: There are two answers to that, your Honor.

First of all, we are concerned in this case with the use of the judgment in the prior case as prima facie evidence, and we want to defend against the use of that judgment in this case.

THE COURT: Why not attack it up in San Francisco before Judge Conti? Maybe he will set the whole judgment aside.

MR. KLITGAARD: We don't think we have to reach that point before we attack the judgment or the use of that judgment as evidence in this case.

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THE COURT: If there was fraud, don't you think it is important to protect the integrity of the judicial process and that the matter ought to be presented before the judge who was the trier of fact?

MR. KLITGAARD: We would think that's an important consideration, your Honor, and it is not impossible, it is not out of the realm of possibility that Standard in that case, when the time comes, would present that—

[26]

THE COURT: I would think Judge Conti, having heard the evidence and done considerable work in this case would be the man that would certainly know whether a particular document or bit of evidence, or evidence in combination with other evidence, might have persuaded him to rule for your client.

MR. KLITGAARD: • • • The problem is, of course, we are faced with two cases, one in which the judgment has already been entered and affirmed, and one in which the judgment is trying to be used in evidence by a person who didn't produce

all the documents, or a group of people. It is in the second case that we want to proceed and prepare our defense on that ground to the use of that evidence, such as it may be, and bring before the Court all the facts. We think there is an interest in that judicial process and the integrity of the system to doing it here, as well as perhaps before Judge Conti.

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THE COURT: He heard all the evidence, and I am sure that in coming to his decision he decided what was important and what wasn't important, what persuaded him and what didn't

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persuade him, and he would know whether these documents in question, I would think, would have made the difference.

[37]

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just seems to me that what you are saying is attacking the integrity of the process, the integrity of the Justice Department, the integrity of Judge Conti's ruling. And if I were Judge Conti I would certainly want to know about it.

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MR. KLITGAARD: Before Judge Conti, your Honor, the way that's handled is that a motion would have to be made in the United States Supreme Court, because that was the last court that handled the case. • • •

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We might add that ever since these new documents turned up we have been proceeding as rapidly as we can to bring this matter out in this case to develop what the facts were;

and when we took Mr. McCook's deposition under Rule 30 and served him with a request for production, we got some documents from him, new documents. When we took Lynn's deposition, and everyone said Lynn didn't have any further documents, we got more documents from Lynn that were relevant. When we took Turnbull's deposition we got still more documents from Turnbull that were relevant. Plus Turnbull's story about how he turned over documents to the Department of Justice. It is Mr. Turnbull that has pointed the finger at the Department of Justice.

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And we took—served a notice upon the Government in the present case we got still more documents.

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For all those reasons, your Honor, • • • we point out to the Court that we think we have

[41]

made a showing here that we are entitled to these. We think there are conflicts. We don't think an affidavit is the way to resolve the problem. We want to test the recollection, to ask about these things, and we think the Government, as well as Standard, should be interested in developing for us what the facts were here and now, so that we can proceed in this case. And then we can go ahead in the Government case if that turns out to be necessary.

THE COURT: Does anyone else wish to be heard in opposition to the Government's motion?

Mr. Desmond.

MR. DESMOND: A brief word, your Honor.

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[43]

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THE COURT: Let me ask you: Do you have any aversion to Judge Conti looking into this matter?

MR. DESMOND: I certainly do not, your Honor.

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[47]

THE COURT: • • •

My ruling is that the motion of the Department of Justice pursuant to Federal Rule of Civil Procedure 26(c)(1) for a protective order is granted.

I think, properly, this attack that is being made on the judgment of Judge Conti ought to be presented to him. I certainly think that he not only has an interest in the matter, because he did decide the case, but that some serious questions have been raised concerning the integrity of that case, and those matters ought to be laid before him under Rule 60.

• • • • • • • •

I am not suggesting that you go to Judge Conti, or ordering that. I am suggesting that you do it, but I certainly don't think that it is within my realm to order you to do it.

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II. Hearing: April 19, 1976

United States District Court for the Central District of California

(Title omitted in printing)

[3]

THE CLERK: • • • 74-1190-HP, William R. McCook vs. Standard Oil Company of California, et al.

Your Honor, this matter is on the Court's calendar this morning for hearing defendant Standard Oil's motion for reconsideration of protective order granted by this Court on March 15, 1976, or for certification of that protective

order for an interlocutory appeal. That motion was filed on March 19, 1976.

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MR. KLITGAARD: Your Honor, I wonder if I might approach the bench and hand you a letter we received from Judge Conti on Friday.

THE COURT: All right.

I don't have to read it to know what it says.

MR. KLITGAARD:

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After the Court's ruling last month we took the depositions of the two lawyers in San Diego who had been employed by Messrs. Lynn, McCook and Turnbull, to investigate the claim against Standard during the pendency of the Government's suit, and we found in their files copies of new documents, copies of documents that were new that we obtained for the first time in this case earlier from Mr. McCook and Mr. Lynn and Mr. Turnbull. And, in addition, wholly separate new documents that we had never seen before from anybody in the case up until this time.

These were documents that weren't produced in the Government case, but which should have been.

What we seek here is the right to examine the Government to find out if there are any further documents in its possession. That's the first thing.

The second thing we seek is the right to develop evidence concerning matters to be offered at trial. We seek this for two reasons. First to develop evidence that goes to the

weight to be given to the judgment in the prior case. Second, to develop evidence to show that Mr. Turnbull

[6]

and Mr. McCook have lied—have lied in this case and have lied in the prior case concerning matters that are material, and to bring that evidence concerning their credibility before the jury.

It is our position in this case that there was a suppression by McCook, Turnbull and Lynn in the prior case, and we think this is a suppression with which the Court is or should be concerned.

The matter is complicated to some degree by a suppression of the Government both post-trial, as shown by its own records, by the documents produced in Mr. Hollander's affidavit, and pretrial if the testimony of Mr. Turnbull is to be believed.

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The Government says that there is no inconsistency between Mr. Hollander's affidavit and the Turnbull deposition.

We think that the impact of the Turnbull testimony has somehow been lost on the Department of Justice. It is

[7]

lost because the Department of Justice treats this as a case where Mr. Turnbull couldn't remember.

In fact, it is true that on some things Mr. Turnbull could not remember, but on other things he could remember. He remembered giving documents to the Department of Justice, and he remembered to some extent his communications with the Department of Justice.

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[17]

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THE COURT: Mr. Desmond, has the Government produced all the documents?

MR. DESMOND: Yes, we have, your Honor, except for a small number of claimed privilege.

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THE COURT: Do you concur with Mr. Desmond's statement, Mr. Hollander?

MR. HOLLANDER: Yes, your Honor, I do.

THE COURT: These are two Government attorneys that are making representations to a court, Mr. Klitgaard.

MR. KLITGAARD: The same representations, your Honor, were made in the affidavit of Mr. Hollander filed with this Court the first time in this motion, and • • • in the supplemental affidavit this statement is made:

[19]

> Although affiant had occasion to examine thousands of documents in the course of the Government case and has not gone back and reviewed each document, affiant has reviewed the documents provided by Standard as we requested.

In other words, in the Government's affidavit the Government itself states that it hasn't gone back and reviewed the documents in its files to determine whether there are any additional documents.

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THE COURT: Mr. Kane, let me ask you this: Will you concede that none of the documents that were delivered by

you to Mr. Klitgaard on or about November 18, 1975, were ever produced by your clients for the Government?

MR. KANE: I cannot make that statement, your Honor, because certain of these quote-unquote new documents are not new at all, they are simply different versions of a document that was contained in TU-1 through 100. The documents really break down—

THE COURT: Different versions in what sense?

MR. KLITGAARD: They have notes on them, comments.

MR. KANE: Either that, or a draft of a letter that

[29]

was later typed; either that or the same document with a phone number written on the front; either that, or rather than an original letter a tissue copy of a letter that would be exactly identical—there are all kinds of [illegible]iations here.

Admittedly there are some documents that were absolutely in no form produced in the Government case. • • •

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MR. KLITGAARD:

[39]

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Without getting into the merits, which really we have to brief and argue fully, but without getting into the merits I wonder if the Court is saying that Congress in passing Section 5(a) of the Clayton Act said that no matter what a potential plaintiff does in a Government suit, he can lie, he can perjure himself, he can fail to produce documents—

THE COURT: Of course not. But I think your avenue is before Judge Conti, and by filing a proper motion under Rule 60.

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[50]

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MR. KLITGAARD: The question we come back to is whether the Government has documents in its files or has seen documents that we may now have obtained copies of, but which the Government had seen earlier in the prior case. Whether Mr. Turnbull is telling the truth. And I can't believe, your Honor, that Mr. Kane or anyone is prepared to argue and decide right now the question of how that judgment in the prior case can be used until we have had a chance to make our record and brief it and argue it. • • •

[51]

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THE COURT: Mr. Kane • • • points out, and I think properly so, that your path is through Rule 60.

MR. KLITGAARD: We think the path lies in both places, your Honor. We think the path lies in this Court where the judgment is going to be in evidence, offered as evidence, and we think the path lies in the Supreme Court where the other fraud was committed.

THE COURT: • • • All right. Both of the present motions before the Court are denied.

• • • • • • • •

c. LETTER DATED NOVEMBER 18, 1975 BY COUNSEL FOR McCOOK TO BERNARD M. HOLLANDER, ESQ.

KINDEL & ANDERSON

LAWYERS

[Remainder of Letterhead Omitted]

November 18, 1975

Refer to File No. 06491-5 000 535 033

PERSONAL

Bernard M. Hollander, Esq.
Room 3222
Antitrust Division
Department of Justice
Washington, D. C. 20530

Re: McCook v. Standard Oil Company of California, et al.

Dear Mr. Hollander:

I am enclosing copies of correspondence to and from governmental agencies which Mr. Kane requested I forward to you.

Very truly yours,
Theresa Struwe
(Mrs.) Theresa Struwe
Secretary to Kevin P. Kane

tps
Enclosures

d. LETTER DATED APRIL 29, 1976, BY COUNSEL FOR GOVERNMENT TO COUNSEL FOR STANDARD.

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number
TEK:BMH:SMG
60-57-193

April 29, 1976

Thomas J. Klitgaard, Esquire
Pillsbury, Madison & Sutro
Standard Oil Building
225 Bush Street
San Francisco, California 94104

Re: McCook v. Standard Oil Company of California, et al., Civil No. 74-1190-HP (C.D. Cal.)

Dear Mr. Klitgaard:

* * * * * * * * *

As to your query after the hearing [of April 19, 1976], the numbers assigned to the McCook proposal of August 13, 1965, which was transmitted through the mail to the Government by Mr. Winton on December 11, 1969, were TU 79-80. Since Mr. Winton provided no transmittal letter, we are unable at this time, six and one-half years after the event, to represent with certainty that nothing else was received from Mr. Winton. However, had he submitted any additional material, it would undoubtedly have been marked

with TU identification and provided to Standard on April 13, 1970.

Sincerely yours,
THOMAS E. KAUPER
Assistant Attorney General
Antitrust Division
Stanley M. Gorinson
By: Stanley M. Gorinson, Attorney
Department of Justice

Enclosure
cc: Angelo Palmieri, Esquire
Kindel & Anderson
1020 N. Broadway
Santa Anna, California 92702
Kevin P. Kane, Esquire
Kindel & Anderson
Twenty-sixth Floor
555 South Flower Street
Los Angeles, California 90071

e. LETTER DATED JUNE 4, 1976, BY COUNSEL FOR GOVERNMENT TO COUNSEL FOR STANDARD, WITH ENCLOSED INDEX OF DOCUMENTS WITHHELD BY GOVERNMENT ON CLAIM OF PRIVILEGE.

UNITED STATES DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

[Remainder of letterhead omitted]

June 4, 1976

Thomas J. Klitgaard, Esq.
Pillsbury, Madison & Sutro
225 Bush Street
San Francisco, California 94104

Re: McCook v. Standard Oil Company of California, et al., Civil No. 74-1190-HP (C.D. Calif.)

Dear Mr. Klitgaard:

Pursuant to Judge Pregerson's letter of May 24, 1976 regarding the above case there is enclosed herewith a five page document entitled Index Of Documents Withheld By Government On Claim Of Privilege.

Sincerely yours,

THOMAS E. KAUPER
Assistant Attorney General
Antitrust Division
Anthony E. Desmond
Anthony E. Desmond
Chief, San Francisco Office

Enclosure

cc: Honorable Harry Pregerson
Kevin P. Kane, Esq.
Angelo J. Palmieri, Esq.

INDEX OF DOCUMENTS WITHHELD BY GOVERNMENT ON CLAIM OF PRIVILEGE

• • • • • • •

Date of Document	Type of Document	Name Signed to Document as Person Who Prepared Document	Addressee	General Subject Matter
• • • • • • •				
3. 11/17/69	Memorandum	Bernard M. Hollander	Files	Notes of interviews by Government counsel with Raymond Turnbull. Re: his and SoCal's Samoan activities.
• • • • • • •				
6. 4/13/70	Memorandum	Bernard M. Hollander	Files	Memorandum noting third parties' consent to have Government produce their documents for SoCal's use pursuant to SoCal's Motion to produce.
• • • • • • •				
• • • • • • •				
15. 10/22/69	Handwritten Notes	Bernard M. Hollander	None	Handwritten notes of Government counsel's telephone interview with Raymond Turnbull regarding his Samoan petroleum activities.
16. 10/ 6/69	Handwritten Notes	Bernard M. Hollander	None	Handwritten notes of Government counsel's telephone interview with Turnbull. Re: Turnbull's and SoCal's Samoan activities.

E. FINDINGS OF FACT AND CONCLUSIONS OF LAW, ENTERED OCTOBER 26, 1972.

United States District Court for the
Northern District of California
(Title omitted in printing)

FINDINGS OF FACT

I. 1. *Jurisdiction and Venue*

This is an action by the United States under Section 4 of the Sherman Act (15 U.S.C. § 4) to have the court adjudge that Standard Oil Company of California (hereinafter "SoCal") has engaged, since at least 1956, in a continuing combination and conspiracy to unreasonably restrain and to monopolize the distribution and sale of petroleum products in American Samoa, and adjudge that SoCal has entered into and utilized long term requirements contracts with the primary non-governmental consumers of the major petroleum products used in Samoa (diesel fuel and aviation fuel) all in unreasonable restraint of trade, in violation of Section 3 of the Sherman Act (15 U.S.C. § 3), and to have the court enjoin the maintenance, continuation or resumption of said violations and grant mandatory relief.

2. Defendant SoCal is a corporation organized and existing under the laws of the State of Delaware with its principal offices in San Francisco, California. It transacts business and is found within the Northern District of California. [GX 1(2), (3); GX 2(9)].

3. SoCal is engaged in trade and commerce in the Territory of American Samoa and between that Territory and states or foreign nations. [GX 1(3-5)].

4. The amount of trade and commerce involved in the sale and distribution of petroleum products in American

Samoa is substantial. [GX 1(6); Amended GX 23; Amended GX 24].

II. *Description of the Defendant*

5. SoCal engages in exploration, production and transportation operations with respect to crude oil, and in refining, manufacturing, marketing, shipping and research operations with respect to refined petroleum products in the United States and in certain foreign countries. [GX 1(3)].

6. SoCal has, since July 1956, been virtually the only supplier and distributor of petroleum products in the Territory of American Samoa [GX 2], where it sells diesel fuel, aviation gasoline and jet fuel, gasoline and oil products for automobiles and other petroleum products, all of which are transported to American Samoa by tanker from SoCal's refinery and plant in Hawaii. [GX 1(5); GX 14].

7. The bulk of SoCal's sales in American Samoa since 1956 has been diesel fuel sold through the two canners (Van Camp Sea Food Company and Star-Kist Foods, Inc.) for use by their foreign tuna fishing fleets and to the Government of American Samoa ("GAS") for the generation of electricity for the Territory, and aviation fuels sold to Pan American World Airways and to the United States Government for its military planes. [D-41,A, D-41 B, D-41 C, D-41 D].

III. *SoCal's Course of Conduct in American Samoa.*

A. *The Combination or Conspiracy to Unreasonably Restrain and Monopolize Trade and Commerce.*

1. *SoCal's Relationship with GAS*

8. From its first consideration of entry into the Samoan market, SoCal intended to establish and maintain a monopoly position there. [D 3 G (S 605T)].

9. SoCal's petroleum products are stored in American Samoa in a tank farm owned by the Government of American Samoa, and in storage facilities at Tafuna Airport erected on GAS land, all of which storage facilities have been used, occupied and controlled by SoCal under a Permit and Agreement dated July 16, 1956, the term of which ran for 10 years from July 1, 1956, renewable at SoCal's option for four additional terms of 10 years each. [GX 1(5); GX 9(2)].

10. In the negotiations between SoCal and GAS which preceded the Department of Interior's approval of the Permit and Agreement of July, 1956, then-Governor Lowe and then-Attorney General Coleman, at SoCal's behest, failed to follow "fitting and proper" procedures: [TR 937]

10(a) Normal procedures for disposal of surplus Government property were not followed. [TR 747].

10(b) Despite the fact that Standard-Vacuum (hereinafter "Stanvac",) which had previously supplied petroleum to Samoa, had asked to be and had been assured that it would be considered as a lessee of the tank farm, SoCal was permitted to formulate the conditions under which Stanvac would be permitted to make an offer, and was permitted to begin direct negotiations with the Attorney General of Samoa prior to the expiration of the time within which Stanvac was to respond. [GX 254, pp. 1-2; TR 752].

10(c) Stanvac's cabled offer of a capital investment was higher than SoCal's initial offer. Lowe and Coleman reported the terms of Stanvac's offer to SoCal and permitted it to alter the terms of its proposal "to give the Governor evidence to show that [its]

offer was higher than Stanvac's offer". [GX 254, p. 3; TR 755].

10(d) Although its cabled offer appeared preferable to SoCal's in several other respects, Stanvac was not granted the one month extension which it requested to receive an engineer's report then enroute and to finalize its offer. [D-3 Q; TR 753-759].

10(e) The agreement negotiated with SoCal was for a maximum term of 50 years, while Stanvac had suggested a maximum term of only 20 years. [GX 254, p. 2].

10(f) The agreement negotiated with SoCal contained a maximum annual rental of $17,500, while Stanvac had suggested a rental based on volume with no maximum. [GX 254, p. 2].

10(g) Governor Lowe informed the Interior Department that SoCal's offer was better than Stanvac's, without revealing that SoCal had been given special treatment by being allowed to increase its initial bid. [D-3 Q].

11. Had Adolf Edward, Jr., Interior's Associate Solicitor for Territories, who was responsible for reviewing the proposed agreement between SoCal and GAS, been aware of the irregularities in the negotiation procedures used in Samoa, he would not have approved of them. [TR 935-937, TR 941-942].

12. The Permit and Agreement of July, 1956, between GAS and SoCal was cancelled by Governor H. Rex Lee on the advice of Interior officials including the Assistant Solicitor on August 11, 1961, "to the extent that it is provided

in Article I that such permit will be construed as a lease should the title to the property involved pass from the United States to the Government of American Samoa." [TR 181-184; GX 241, GX 241 A, GX 241 B, GX 242].

13. Said cancellation was never rescinded nor was any lease with SoCal ever signed by Governor Lee. [TR 188].

14. Because said cancellation was never rescinded, nor any lease with SoCal subsequently signed, the Permit and Agreement of July, 1956, between GAS and SoCal did not ripen into a lease agreeemnt as would have occurred had said cancellation not been made. [GX 257, GX 243, GX 244, GX 245, GX 245 A & B].

15. No formulation of prices to be charged in American Samoa by SoCal is contained in the Permit and Agreement of July, 1956. The only such formulation is contained in a unilateral letter from SoCal to GAS which is not incorporated or referred to in said Permit and Agreement, and which bases Samoan prices upon the level of domestic posted prices in Richmond, California, over 4,500 miles away. [D-3-0].

16. The only provision in the Permit and Agreement of July, 1956, providing for escalation of the maximum annual rental of $17,500 for use of GAS' storage facilities, ties any such escalation to the price of crude oil in Richmond, California, and bears no relationship to volume usage of the facilities which has increased markedly since 1956, while crude oil prices in Richmond, California, remained relatively stable. [GX 9; TR 925].

17. Each year since the fiscal year July 1, 1962-June 30, 1963, SoCal's usage of GAS' storage facilities has exceeded the volume which requires a maximum rental payment, but because of the maximum rental provision in the Permit and Agreement of July, 1956, only $17,500 has been paid to GAS by SoCal. [GX 10a].

18. Normal rental for a comparable bulk storage plant would be closer to $100,000 per year than $17,500 per year. [TR 2603, TR 2605-6].

19. In 1961, the Permit and Agreement of July, 1956, was used by SoCal in furtherance of its aforesaid continuing combination and conspiracy, to dissuade Shell Oil Company of New Zealand from constructing or leasing storage and fueling facilities at Tafuna Airport in American Samoa, with the effect of permitting SoCal to maintain its monopoly in American Samoa: [TX 253, GX 253 A-D]; TR 783-798, TR 963-966].

19(a) In about February, 1961, SoCal refused to work out an arrangement with Shell to allow Shell to supply TEAL (now Air New Zealand) with aviation fuel at Tafuna Airport. [GX 253 AA].

19(b) When Shell sought to construct its own storage and pumping facility at Tafuna Airport, then-Governor Coleman took the position, after consultation with SoCal, that SoCal had the "exclusive right to install fueling equipment and to service all aircraft using the field." [GX 253].

19(c) Shell never entered the aviation fuel market in Samoa except by arrangement with SoCal. [TR 791-792; GX 37, GX 38].

19(d) Because of the high price of aviation fuel supplied to Air New Zealand at Tafuna Airport, Air New Zealand no longer uplifts aviation fuel at that point, but instead fuels its planes at Nadi, Fiji. [GX 12, GX 10; TR 514-515, 519].

2. *SoCal's Relationship with the Canners*

20. Contingent upon the execution of the Permit and Agreement of July, 1956, between GAS and SoCal, Van Camp Sea Food Company ("Van Camp"), a tuna canner and processor in Samoa which itself used only small quantities of diesel fuel, entered into a 10 year requirements contract with SoCal dated June 21, 1956, which assured that no less than 60% and as much as all of Van Camp's monthly operational requirements of petroleum products in American Samoa, including as a practical matter the requirements of the foreign fishing fleets serving Van Camp there, would be provided by SoCal. [GX 26 IV, D 14 A, GX 28; TR 1251-1274].

21. The 1956 requirements contract between Van Camp and SoCal provided no advantage to Van Camp but had the effect of foreclosing competitors from Van Camp's business.

22. Star-Kist Foods Inc. ("Star-Kist"), then a new tuna canner and processor in American Samoa which itself used only small quantities of diesel fuel, entered into a 10 year requirements contract with SoCal, effective September 1, 1963, which assured that no less than 60% and as much as all of Star-Kist's monthly operational requirements of petroleum products in American Samoa, including as a practical matter the requirements of the foreign fishing fleets serving Star-Kist there, would be provided by SoCal. [GX 30(IV)(c), GX 33, GX 34; TR 3036-3039].

23. The 1963 requirements contract between Star-Kist and SoCal provided no advantage to Star-Kist but had the effect of foreclosing competitors from Star-Kist's business.

24. Van Camp since 1956, and Star-Kist since 1964 have informed SoCal in detail of competitive activity in or relating to Samoa, and have thus aided SoCal in maintaining its monopoly position.

24(a) In October, 1956, when Moore of Van Camp learned that the Japanese fishing fleets were threatening, because of SoCal's high price for lubricating oil, to import such oil from Japan, he notified SoCal, which reduced the fleets' price by almost one-third and thus prevented the supply of such oil from another source. [GX 41, GX 42, GX 43].

24(b) In November 1960, after SoCal had four times increased its diesel fuel prices (by 0.5¢ per gallon in November, 1956 and January, 1957, by 0.3¢ per gallon in June, 1957 and February, 1959), and Gillis of Van Camp had notified SoCal that because of SoCal's high diesel fuel price, a Japanese fleet was threatening to bring such fuel from Japan, SoCal degraded its diesel fuel and reduced the fleet price by 0.5¢ per gallon, and thus prevented the supply of such fuel from another source. [D 41 N, D 41 NA, D 41 M; GX 45, GX 46].

24(c) During 1964, Star-Kist, which had by now begun operations in American Samoa, joined Van Camp in reporting the activities of potential competitors in Samoa to SoCal. [GX 143 B, GX 63, GX 62].

24(d) In mid-1964, Star-Kist discouraged Mobil's attempt "to cut in on some of Standard Oil's monopoly in the South Pacific." [GX 181].

24(e) In July 1964, Moore of Van Camp, in reporting a renewed threat by the Japanese fishing fleet to import diesel fuel from Japan because of SoCal's high prices, told SoCal that Van Camp was not trying to beat down the market price, but was interested in SoCal's retaining the business it enjoyed in American Samoa. [GX 57].

25. In October, 1964, Governor Lee, who had no intention of protecting SoCal's monopoly position in American Samoa, expressed to SoCal his concern about its Samoan prices and told SoCal that other oil companies were exploring the Samoan market without revealing their names or any details. [GX 236, GX 64].

26. In February, 1965, recognizing that there was a serious threat to its monopoly position, SoCal effected a general price reduction in petroleum products in Samoa.

The July 1 1965 Price Reduction for Samoan Diesel Fuel Special (SDFS)

27. In about December, 1964, the canners, because of continuing pressure from the fishing fleets over SoCal's monopoly prices, ostensibly considered joining forces with GAS to establish a second fuel storage facility in Samoa. [GX 216, GX 217, GX 220, GX 222, GX 224].

28. The matter was discussed at meetings between Governor Lee and representatives of the canners in January, March and June 1965. [D 21 K, GX 240; TR 239].

29. Governor Lee suggested that the canners finance the facility and have the Samoan Development Corporation, which had been organized to promote economic development in Samoa, manage the facility and sell fuel products. Bids would be invited on a world-wide basis for the supply of petroleum products for each three year period. Any company, including SoCal, would then have had an equal chance to bid. [TR 234-235 A; TR 1299].

30. There was no understanding between the parties involved that the plan for a second fuel facility would be leaked to SoCal before it was finalized, and Governor Lee understood that until the papers had been signed, the plan would be held in strictest confidence. [GX 240; TR 241; TR

1806, lines 22-24; TR 1866, lines 16-20; TR 2054, lines 7-16; TR 3045, lines 14-25].

31. On June 9, 1965, representatives of Van Camp and Star-Kist met with Governor Lee in Los Angeles, and led him to believe that they were going to go ahead on the second facility. [TR 240].

32. On June 11, 1965, two days after the Los Angeles meeting and only one day after the proposed agreement [GX 71] was distributed to the three participants, Gillis of Van Camp advised Evans of SoCal that there were plans for other fuel facilities [GX 68], that Van Camp had been solicited by other suppliers at a more attractive price than SoCal's for diesel fuel [GX 66], and that it would take a 2¢ per gallon cut in the price of SDFS to "put out the fire" and "hold Van Camp's business." [GX 67, GX 68].

33. When SoCal on July 12, 1965, met Gillis' condition and agreed to drop the price of Samoan Diesel Fuel Special ("SDFS") by 2¢ per gallon effective July 1, 1965, Van Camp, which had given notice on May 25, 1965, of its intention to terminate its existing ten year requirements contract with SoCal, agreed in principle to a new five year requirements contract with SoCal. [GX 67, GX 74, GX 79 A, GX 39, p. 2].

34. SoCal's 2¢ price reduction for SDFS was made as an inducement for Van Camp's contract renewal and with an awareness by SoCal that this would destroy the plan for a new storage facility. [GX 39, p. 2; GX 267, pp. 74-75; TR 445-446; TR 1295-1296].

35. The price reduction by SoCal was made because SoCal had learned from Van Camp that the canners and GAS might otherwise secure a competitive supply. SoCal had also learned from Van Camp that Mobil and Shell were considering entering the market and SoCal made the re-

duction to prevent entry by them or any other supplier. [TR 1295-1296; GX 263, pp. 84-85; GX 267, pp. 72-75; GX 66, GX 70].

36. SoCal's price reduction on SDFS from 14.95¢ per gallon to 13.95¢ per gallon, effective February 1, 1965, plus its reduction from 13.95¢ per gallon to 11.95¢, effective July 1, 1965, constituted a 20% reduction in the price of SDFS during a 6-month period. [D-41 M].

3. *SoCal's Additional Acts in Furtherance of the Conspiracy*

37. As early as 1963, SoCal attempted to enter into a five year contract with GAS for its power plant requirements. [GX 48; TR 217-218.]

38. In July 1965, when SoCal granted the canners the 2¢ price reduction in the price of SDFS, it withheld that reduction from GAS in an unsuccessful attempt to force GAS into a five year requirements contract. [GX 78; TR 249-250].

39. In July 1965, SoCal also offered to construct new storage tanks and fueling facilities on the industrial side of Pago Pago Bay without, however, relinquishing control over the existing facilities, if GAS would agree to enter into a ten year requirements contract effective when the new facilities became operational. [GX 78; TR 249-250; TR 259].

40. Since GAS was adamant in its refusal to enter into a requirements contract with SoCal and continued to seek a second supplier, SoCal, in October 1965, finally granted GAS the 2¢ reduction "with the hope of stopping any further negotiations with other companies". [GX 39].

41. Between 1963 and 1966, SoCal opposed the installation, at GAS expense, of duplicate fueling facilities under the fuel pads at Tafuna Airport, which installation assured

potential competitors access to the airport. [TR 256; TR 1741-1744; GX 86-89].

42. Between 1966 and 1968, SoCal made several efforts to obtain additional fuel storage space at Tafuna Airport, even though it had no immediate need for it. [TR 257; GX 91-96].

43. In 1966, SoCal sent a representative to Tokyo as part of "our efforts to secure contracts with Japan, Korea and Chinese fishing fleets in Samoan waters serving Van Camp and Star-Kist". [GX 99].

44. SoCal decided that requirements contracts directly with the foreign fishing fleets were unnecessary because "Standard has exclusive contract with Van Camp/Star-Kist therefore it will not change situation even users signed with Standard exclusively". [GX 103].

45. In addition to its entry into requirements contracts with the canners, SoCal entered into similar contracts with Pan American World Airways ("Pan Am"), the major user of aircraft fuel at Tafuna Airport. [TR 1225-1229].

B. *SoCal's Illegal Requirements Contracts*

1. *Requirements Contracts with the Canners.*

46. The 1956 SoCal-Van Camp contract, which by its express terms required Van Camp to purchase at least 60% of its monthly requirements of petroleum products from SoCal, called for SoCal to deliver the petroleum products to Van Camp's premises and "to vessels at the oil docks in Pago Pago." [GX 26(IV)].

47. Star-Kist and SoCal signed a similar ten year requirements contract effective September 1, 1963. [GX 30].

48. Effective July 1, 1965, SoCal entered into a new five year requirements contract with Van Camp similar to their 1956 agreement, but which sets forth a specific price of

11.95¢ per gallon for SDFS, the marine diesel fuel used by the fishing fleets but not by Van Camp, and the only product price specifically set forth in this contract. [GX 26 (July 1, 1965, V), TR 1264-1266].

49. Effective July 1, 1965, SoCal amended Star-Kist's requirements contract by reducing the price of SDFS to Star-Kist's fishing vessels to 11.95¢ per gallon. [GX 32].

50. The canners receive tuna from Korean, Nationalist Chinese and Japanese fishing fleets which require that an adequate supply of diesel fuel be available to them at Pago Pago. The canners purchase SDFS from SoCal which pipes it directly from the storage facilities to the fishing boats. The canners sell the fuel to the fleets on credit. [GX 18, TR 508, TR 1252].

51. As a result of the relationship between the fleets and the canners and the requirements contracts between the canners and SoCal, the fleets have since the signing of the contracts, purchased virtually 100% of their requirements from SoCal. [GX 16, GX 17].

52. The canneries themselves use very small quantities of fuel oil. [TR 1253; GX 18].

53. The July 1965 price reduction by SoCal in the price of SDFS to the canners was made "in exchange for their renewing our products contract." [GX 39, p. 2; TR 1267-1270].

54. SoCal believed that by reducing the price of SDFS in July 1965, it would keep SoCal in business with the fishing fleets and dissuade Mobil, Shell or any other supplier from entering the market. [TR 1267-1270].

55. SoCal considered that the requirements contracts were for the requirements of the fleet, and that they gave SoCal "a valid business hold" on the fleets' requirements. [D 14 A; TR 1273-1274].

56. SoCal and the canners amended the requirements contracts to permit the fleets to be fueled at Tahiti, where the canners had no canneries. [TR 1257-1258; GX 28, GX 34, GX 265, GX 266].

57. Because of the requirements contracts, competitors of SoCal were dissuaded from entering the market. [GX 151, GX 177, GX 185].

2. *Requirements Contract with Pan American.*

58. From the time when American Samoa was added as a supply point on the aviation fuel contract between SoCal and Pan Am until the present, Pan Am has been obligated to take some and as much as all of its requirements of aviation fuel at Tafuna Airport from SoCal. [TR 1225-1229].

59. Effective January 1, 1963, SoCal entered into a contract whereby Pan Am for four years was obligated to take all of its requirements of aviation engine fuel at Tafuna from SoCal. [TR 1225].

60. Although the wording of the requirements contract between SoCal and Pan Am was modified in December 1966, Pan Am continued to take all its requirements at Tafuna from SoCal. [TR 1228].

61. Effective January 1, 1969, the contract was amended to obligate Pan Am to take no less than two-thirds, and as much as all of its requirements at Tafuna from SoCal. [TR 1227].

C. *Effects of the Illegal Combination and Conspiracy and the Illegal Requirements Contracts.*

62. SoCal has been able to maintain extremely high prices for petroleum products in American Samoa.

62(a) Between 1956 and 1970, SoCal supplied petroleum products in Samoa at domestic prices instead of

providing petroleum products at cheaper world market prices. [TR 1288-1290].

62(b) Because of high Samoan diesel fuel prices and because about 65% of the cost to GAS of producing electricity is accounted for by the cost of diesel fuel, Samoan electric costs have been high. [TR 99, TR 215, GX 149, GX 150].

62(c) The cost of diesel fuel to the foreign fishing fleets serving the Samoan canners has been maintained at prices which were among the highest in the world. [GX 133, GX 117, GX 123].

62(d) The prices of aviation fuel to the commercial airlines serving American Samoa have been among the highest in the world. [TR 2421-2423].

62(e) Since 1956, the Department of Defense ("DOD") has paid higher prices for aviation gasoline and jet fuel procured at Samoa than at Fiji where there is competition on the part of four suppliers of petroleum products. [TR 3072-3073; TR 3060-3061; TR 1411].

63. Despite repeated efforts by several administrations, GAS has been unable to attract a source of supply to compete with SoCal. [TR 191, TR 219, TR 493, GX 154, GX 155, GX 157, GX 158, GX 236, GX 249 C, GX 250-252].

64. Since 1956, even though the Department of Defense ("DOD") has repeatedly solicited proposals for jet fuel and/or aviation gasoline from all major suppliers servicing the Pacific, only SoCal, because of its monopoly position in Samoa, could respond, and it has retained the DOD business during the entire period. [D 2 B; GX 161, TR 1232-1233; TR 3058-3060].

65. Commercial airlines have minimized their purchases of aviation fuel at American Samoa because of SoCal's high prices there compared with the competitive markets of Tahiti and Fiji.

65(a) SoCal's aviation fuel prices have been maintained at higher levels at American Samoa than at Tahiti which is served by the same tanker and is further from Hawaii than American Samoa, but where SoCal encounters "competition for av-fuels" from three suppliers. [GX 14, TR 1060, Amended GX 130, pp. 8-9; GX 127-128].

65(b) SoCal's aviation fuel prices have been maintained at substantially higher levels at American Samoa than are charged at Fiji, where SoCal encounters competition. [Amended GX 130, pp. 6-9; GX 165 A].

65(c) Because Samoan aviation fuel prices are higher than those at Tahiti and Fiji, the amount of stored fuel a Pan Am pilot having any choice would be expected to take on at Tafuna Airport is minimized. [GX 162, GX 163; TR 2414-2417, TR 1082-1083].

65(d) Because Samoan aviation fuel prices are higher than Fiji's, Air New Zealand no longer takes on any aviation fuel at American Samoa. [GX 12].

66. American Samoa has suffered a loss of business, revenues, taxes and duties, due to SoCal's pricing policies, and the Samoan economy has suffered as a result. [TR 496, TR 519-520].

66(a) As a result of SoCal's price increase of 1.3¢ per gallon for SDFS in June, 1972, the GAS cost of

doing business has been increased. [TR 506-507; TR 522].

66(b) Increased fuel prices result in loss of matching funds that are used by GAS to obtain federal programs for Samoa. [TR 519-520].

66(c) One reason why Pan Am resisted increasing flights through Samoa was the high cost of Samoan aviation fuel, and fuel and oil accounts for more than half of the total flying costs of Pan Am planes in the Pacific and approximately one-third of total aircraft operating expenses in that area. [TR 201-203, TR 453-454; GX 258-264].

67. Because of SoCal's dominant position in American Samoa, its illegal combination and conspiracy with the canners and the illegal requirements contracts, many potential competitive petroleum suppliers have been foreclosed from the market, including the following:

Stanvac:	[GX 254]
Mobil:	[GX 153, GX 174-182, GX 185, GX 192-194, GX 143B; TR 1279-1281]
UNOCO:	[GX 195-199, GX 58-61, GX 154-155, GX 200, GX 202, GX 206; TR 2633-2634]
Shell:	[GX 253AA, GX 253, GX 253A-D, GX 139, GX 207, GX 72, GX 156-158, GX 208-213; TR 489, TR 506-507]
Proposed Joint Fuel Storage Facility:	[GX 66-68, GX 74, GX 79A; TR 445-446, TR 1295-1296]
William R. McCook:	[TR 2064-2065, TR 2071, TR 2074; GX 228]
Time Oil:	[TR 2594, TR 2606, TR 2603-2604; GX 147, GX 172, GX 214-215]
British Petroleum:	[GX 229-234]

D. GENERAL FINDINGS

68. Neither the Permit and Agreement of 1956 [GX 9], nor SoCal's unilateral letter undertaking to base its Samoan prices on posted domestic prices at Richmond, California [D-3-0], nor the pertinent section of the Buy American Act [41 U.S.C. Sec. 10b(a)], required SoCal to provide only domestic fuel in Samoa.

68(a) Interior experts told SoCal in November 1964 that "The Buy American Act permitted purchase of foreign products by the Government of Samoa if there was more than a 6% price differential." [D-14 U].

68(b) SoCal never offered a price on foreign fuel to GAS during Governor Lee's tenure, although its use would have resulted in a considerable saving to Samoa. It was not until Governor Haydon had put out requests for proposals to other oil companies in early 1970, that SoCal sought authority to use foreign fuel. [TR 1278-1281, TR 1284, TR 1143, GX 250-252].

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter of the complaint herein and the parties hereto.

[1] 2. SoCal has, since at least 1956, violated Section 3 of the Sherman Act by engaging in a continuing combination and conspiracy with various persons, including certain GAS officials and Van Camp and Star-Kist, to unreasonably restrain and monopolize the distribution and sale of petroleum products in American Samoa. United States v. Maryland and Virginia Milk Producers Ass'n., 168 F.Supp. 880, 881, 882 (D.C. D.C.1959), aff'd 362 U.S. 458, 80 S.Ct. 847, 4 L.Ed.2d 880 (1960); United States v. Patten, 226 U.S. 525, 544, 33 S.Ct. 141, 57 L.Ed. 333 (1913); American Tobacco Co. v. United States, 328 U.S. 781, 809, 66 S.Ct. 1125, 90 L.Ed. 1575 (1946); United States v.

United States Gypsum Co., 333 U.S. 364, 395-396, 68 S.Ct. 525, 92 L.Ed. 746 (1948); United States v. National City Lines, 186 F.2d 562, 572 (7th Cir. 1951), cert. denied, 341 U.S. 916, 71 S.Ct. 735, 95 L. Ed. 1351 (1951); Ethyl Gasoline Corp. v. United States, 309 U.S. 436, 453, 60 S.Ct. 618, 84 L.Ed. 852 (1940); United States v. Giuliano, 263 F.2d 582, 584 (3rd Cir. 1959); Holland v. United States, 348 U.S. 121, 75 S.Ct. 127, 99 L. Ed. 150 (1954); United States v. Nelson, 419 F.2d 1237, 1243-1245 (9th Cir. 1969).

3. Pursuant to said combination and conspiracy, SoCal acted in concert with the GAS officials involved to preclude other oil companies from competing with SoCal for the occupancy, use and control of the GAS bulk petroleum storage facilities.

4. Pursuant to said combination and conspiracy, SoCal entered into long-term requirements contracts with Van Camp (in 1956 and 1965) and with Star-Kist (in 1963).

5. Van Camp and Star-Kist have participated in the unlawful combination and conspiracy by informing SoCal in detail of competitive activity in Samoa, by tying their own requirements and those of their foreign fishing fleets to SoCal, and generally by protecting SoCal's monopoly position in Samoa.

6. The effect of the aforesaid combination and conspiracy has been unreasonably to restrain and monopolize the distribution and sale of petroleum products in American Samoa.

[2] 7. The long term requirements contracts which SoCal entered into with Van Camp, Star-Kist and Pan Am, are in and of themselves and apart from said combination and conspiracy, in unreasonable restraint of trade in petroleum products in American Samoa in violation of Section 3 of the Sherman Act, because they have foreclosed competition in a substantial share of that market. Standard Oil Company of California v. United States, 78 F.Supp. 850 (S.D.Cal. 1948) aff'd 337 U.S. 293, 69 S.Ct. 1051, 93 L.Ed. 1371 (1949); United States v. American Can, 87 F.Supp. 18 (N.D.Cal. 1949); Tampa Electric Co. v. Nashville Coal Co., 365 U.S. 320, 81 S.Ct. 623, 5 L.Ed.2d 580 (1961); Twin City Sportservice v. Finley, 365 F.Supp. 235 (N.D. Cal. 1972).

[3] 8. The relief necessary to open the Samoan market to competition and dispel the unlawful effects of the violations found herein is the following:

(a) that defendant is enjoined and restrained from continuing, reviving or renewing the aforesaid combination and conspiracy;

(b) that defendant is ordered to refrain from enforcing, continuing, reviving or renewing the aforesaid requirements contracts, or from entering into any other contracts having the same purpose or effect; and

(c) that defendant is ordered to take all necessary steps so as to enable other suppliers or distributors of petroleum products to use an adequate portion of the GAS storage facilities on a shared cost basis to enable said suppliers or distributors to compete in the Samoan market, in particular to afford GAS the opportunity to obtain competitive bids every three years commencing forthwith for its requirements of petroleum products. United States v. E. I. duPont deNemours & Co., 366 U.S. 316, 322, 81 S.Ct. 1243, 6 L.Ed.2d 318 (1961); Ford Motor Co. v. United States, 405 U.S. 562, 573-578, 92 S.Ct. 1142, 31 L.Ed.2d 492 (1972); International Salt Co. v. United States, 332 U.S. 392, 401, 68 S.Ct. 12, 92 L.Ed. 20 (1947); United States v. E. I. duPont & Co., 353 U.S. 586, 607-608, 77 S.Ct. 872, 1 L.Ed.2d 1057 (1957); United States v. Crescent Amusement Co., 323 U.S. 173, 185,

65 S.Ct. 254, 89 L.Ed. 160 (1944); Ethyl Gasoline Corporation v. United States, 309 U.S. 436, 461, 60 S.Ct. 618, 84 L.Ed. 852 (1940); United States v. United States Gypsum Co., 340 U.S. 76, 88-89, 71 S.Ct. 160, 95 L.Ed. 89 (1950); United States v. Loew's Inc., 371 U.S. 38, 53, 83 S.Ct. 97, 9 L.Ed.2d 11 (1962).

9. The parties are requested to file suggested changes, corrections, etc., in these findings and conclusions within thirty days of this date, along with a suggested form of final judgment.

F. JUDGMENT, ENTERED DECEMBER 14, 1972.

United States District Court for the Northern District of California

(Title omitted in printing)

FINAL JUDGMENT

Plaintiff, United States of America, filed its complaint on September 30, 1969, and the defendant, Standard Oil of California ("SoCal") appeared and filed its answer. Trial having been completed and the court having considered the pleadings, evidence, briefs and arguments, and being fully informed, entered findings of fact and conclusions of law on October 26, 1972.

Now, therefore, it is hereby ordered, adjudged and decreed as follows:

I

This court has jurisdiction over the subject matter of the complaint herein and the parties hereto.

II

Based upon the court's findings of fact and its conclusions of law, the defendant has (1) engaged in a combination and conspiracy to unreasonably restrain and monopolize

trade and commerce in the distribution and sale of petroleum products in the United States Territory of American Samoa and between that Territory and States of the United States in violation of Section 3 of the Sherman Act; and (2) entered into contracts with Van Camp Sea Food Company ("Van Camp"), Star-Kist Foods, Inc. ("Star-Kist"), and Pan American World Airways ("Pan-Am") in unreasonable restraint of said trade and commerce in petroleum products in violation of Section 3 of the Sherman Act.

III

The provisions of this Final Judgment shall apply to the defendant, its successors, subsidiaries, assigns, officers, directors, agents and its employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

(a) The defendant is enjoined and restrained from continuing, reviving, or renewing the aforesaid combination and conspiracy.

(b) The defendant is ordered to refrain from enforcing, continuing, reviving, or renewing any requirements contracts with customers in Samoa.

(c) The defendant is ordered to permit other suppliers or distributors of petroleum products to use an adequate portion of the Government of American Samoa ("GAS") petroleum storage facilities on a shared-cost basis to enable said suppliers or distributors to compete in the American Samoan market. Within sixty (60) days of the effective date hereof, defendant shall serve upon plaintiff a plan pursuant to which such suppliers or distributors will be permitted so to use the facilities. Thereafter the parties shall

attempt to reach agreement on a plan to be filed with and approved by the Court. If agreement cannot be reached within one hundred twenty (120) days of the effective date hereof, resort shall be had to the Court for hearing and determination.

V

(a) For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, made to its principal office, be permitted:

(1) Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

(b) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such reports in writing to the plaintiff with respect to matters contained in this Final Judgment as may from time to time be requested.

(c) No information obtained by the means provided in this Section V shall be divulged by any representative of the Executive Branch to any person other than a duly authorized representative of such Branch, except in the course of legal proceedings to which the United States is a party

for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VI

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of the violation of any of the provisions contained therein.

VII

Plaintiff shall recover the costs of this action from defendant.